

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
3  
4 In Re: ) Docket No. 3:17-BK-3283 (LTS)  
5 )  
6 ) PROMESA Title III  
7 The Financial Oversight and )  
8 Management Board for )  
9 Puerto Rico, ) (Jointly Administered)  
10 )  
11 *as representative of* )  
12 )  
13 The Commonwealth of )  
14 Puerto Rico et al., ) March 4, 2020  
15 )  
16 Debtors, )  
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12 In Re: ) Docket No. 3:17-BK-3284 (LTS)  
13 )  
14 ) PROMESA Title III  
15 The Financial Oversight and )  
16 Management Board for )  
17 Puerto Rico, ) (Jointly Administered)  
18 )  
19 *as representative of* )  
20 )  
21 COFINA, )  
22 )  
23 )  
24 Debtor, )  
25 )

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3 In Re: ) Docket No. 3:17-BK-3566 (LTS)  
4 )  
5 ) PROMESA Title III  
6 The Financial Oversight and )  
7 Management Board for )  
8 Puerto Rico, ) (Jointly Administered)  
9 )  
10 *as representative of* )  
11 )  
12 Employees Retirement System )  
13 of the Government of the )  
14 Commonwealth of Puerto )  
15 Rico, )  
16 )  
17 Debtor, )  
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11  
12 In Re: ) Docket No. 3:17-BK-3567 (LTS)  
13 )  
14 ) PROMESA Title III  
15 The Financial Oversight and )  
16 Management Board for )  
17 Puerto Rico, ) (Jointly Administered)  
18 )  
19 *as representative of* )  
20 )  
21 Puerto Rico Highways and )  
22 Transportation Authority, )  
23 )  
24 Debtor, )  
25 )

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2  
3 In Re: ) Docket No. 3:17-BK-4780 (LTS)  
4 )  
5 ) PROMESA Title III  
6 The Financial Oversight and )  
7 Management Board for )  
8 Puerto Rico, ) (Jointly Administered)  
9 )  
10 *as representative of* )  
11 )  
12 Puerto Rico Electric )  
13 Power Authority, )  
14 )  
15 Debtor, )  
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10  
11 In Re: ) Docket No. 3:19-BK-5523 (LTS)  
12 )  
13 ) PROMESA Title III  
14 The Financial Oversight and )  
15 Management Board for )  
16 Puerto Rico, ) (Jointly Administered)  
17 )  
18 *as representative of* )  
19 )  
20 )  
21 Puerto Rico Public )  
22 Buildings Authority, )  
23 )  
24 Debtor, )  
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2  
3 Financial Oversight and ) Docket No. 3:19-AP-00393 (LTS)  
4 Management Board for )  
5 Puerto Rico, ) *in 3:17-BK-3283 (LTS)*  
6 )  
7 *as representative of the* )  
8 *Employee Retirement* )  
9 *System of the Government of* )  
10 *the Commonwealth of* )  
11 *Puerto Rico,* )  
12 )  
13 Plaintiff, )  
14 )  
15 v. )  
16 )  
17 Wanda Vazquez Garced, )  
18 et al., )  
19 )  
20 Defendants. )  
21 )  
22 )  
23 )  
24 )  
25 )

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13 Autoridad de Energia ) Docket No. 3:19-AP-00453 (LTS)  
14 Electrica de Puerto Rico, )  
15 ) *in 3:17-BK-4780 (LTS)*  
16 Plaintiff, )  
17 )  
18 v. )  
19 )  
20 Vitol, S.A., et al., )  
21 )  
22 Defendants. )  
23 )  
24 )  
25 )

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20 OMNIBUS HEARING

21 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

22 UNITED STATES DISTRICT COURT JUDGE

23 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

24 UNITED STATES DISTRICT COURT JUDGE

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1 APPEARANCES:

2 For the Mediation Team: Honorable Chief U.S. Bankruptcy Judge  
3 Barbara J. Houser

4 For The Commonwealth  
5 of Puerto Rico, et al.: Mr. Martin J. Bienenstock, PHV  
6 Mr. Brian S. Rosen, PHV  
7 Ms. Laura Stafford, PHV  
8 Mr. Michael A. Firestein, PHV  
9 Mr. Lary A. Rappaport, PHV  
10 Mr. Ehud Barak, PHV  
11 Mr. Michael T. Mervis, PHV  
12 Mr. Steve Ma, PHV

13 For the U.S. Trustee  
14 Region 21: Ms. Monsita Lecaroz Arribas, AUST

15 For the Official  
16 Committee of Unsecured  
17 Creditors: Mr. Luc A. Despins, PHV  
18 Mr. G. Alexander Bongartz, PHV

19 For the Puerto Rico  
20 Fiscal Agency and  
21 Financial Advisory  
22 Authority: Mr. Peter Friedman, PHV  
23 Mr. Luis C. Marini Biaggi, Esq.  
24 Mr. John Rapisardi, PHV  
25 Mr. William Sushon, PHV  
Ms. Elizabeth McKeen, PHV

For Assured Guaranty  
Corp. and Assured  
Guaranty Municipal Corp: Mr. William J. Natbony, PHV  
Mr. Mark C. Ellenberg, PHV  
Mr. Casey J. Servais, PHV

For Financial Guaranty  
Insurance Company: Mr. Martin A. Sosland, PHV  
Mr. Jason W. Callen, PHV

For Mr. Hein: Mr. Peter Hein, Pro Se  
Appearing from New York

For Cantor Katz  
Collateral Monitor: Mr. Douglas Mintz, PHV

1 APPEARANCES, Continued:

2 For Salud Integral  
3 en la Montana: Mr. John E. Mudd, Esq.

4 For National Public  
5 Finance Guarantee Corp.: Mr. Robert Berezin, PHV  
6 Appearing from New York

7 For Cobra Acquisitions  
8 LLC: Mr. Stephen M. Baldini, PHV  
9 Appearing from New York  
10 Mr. Fernando Van Derdys, Esq.

11 For QTCB Noteholder  
12 Group: Mr. Kurt A. Mayr, PHV  
13 Mr. David L. Lawton, PHV

14 For Ambac Assurance  
15 Corporation: Mr. Dennis Dunne, PHV  
16 Ms. Atara Miller, PHV  
17 Mr. Grant Mainland, PHV

18 For the Lawful  
19 Constitutional  
20 Debt Coalition: Mr. Susheel Kirpalani, PHV  
21 Mr. Daniel Salinas, PHV

22 For the Ad Hoc  
23 Group of PREPA  
24 Bondholders: Ms. Alice J. Byowitz, PHV

25 For the Ad Hoc  
Group of  
Constitutional  
Debtholders: Mr. James M. Peck, PHV  
Mr. Andrew Kissner, PHV

For the Fee Examiner: Ms. Katherine Stadler, PHV  
Appearing from New York

For the Official  
Committee of Retired  
Employees of the  
Commonwealth of  
Puerto Rico: Mr. Robert Gordon, PHV  
Mr. Landon Raiford, PHV

1 APPEARANCES, Continued:  
2 For the Ad Hoc  
3 Group of General  
4 Obligation Bondholders: Mr. Mark T. Stancil, PHV  
5 For AmeriNational  
6 Community Services,  
7 LLC: Mr. Nayuan Zouairabani, PHV  
8 For UTIER and  
9 SREAEE: Mr. Rolando Emmanuelli Jimenez, Esq.  
10 Ms. Jessica Mendez Colberg, Esq.  
11 For Vitol Inc.: Mr. Alexander L. Kaplan, PHV  
12 For Puerto Rico  
13 Ban, LLC: Mr. James A. Newton, PHV  
14 For Morgan Stanley  
15 & Co., LLC, Jeffries,  
16 LLC, and BMO Capital  
17 Markets GKST, Inc.: Mr. Angel E. Rotger Sabat, Esq.  
18 Also Present: Ms. Sandra Torres  
19 Ms. Angelica Carrasco  
20 Ms. Olga Alicea, Interpreter  
21  
22  
23  
24 Proceedings recorded by stenography. Transcript produced by  
25 CAT.

I N D E X

WITNESSES:

PAGE

None offered.

EXHIBITS:

None offered.



San Juan, Puerto Rico

March 4, 2020

At or about 9:38 AM

\* \* \*

THE COURT: Again, buenos dias. Good morning.

Welcome counsel, parties in interest, and members of the press and public here in San Juan, those observing here and in New York and telephonic participants. As always, it's good to be back here.

I will give you my usual reminder. Consistent with court and judicial conference policies and the Orders that have been issued, there's to be no use of any electronic devices in either courtroom to communicate with any person, source, or repository of information, nor to record any part of the proceedings. So all electronic devices must be turned off, unless you are using a particular device to take notes or to refer to notes or documents that are already loaded on the device. All audible signals, including vibration features, must be turned off.

No recording or retransmission of the hearing is permitted by any person, including but not limited to the parties or the press. Anyone who is observed or otherwise found to have been texting, e-mailing or otherwise communicating with a device from a courtroom during the court proceeding will be subject to sanctions, including but not

1 limited to confiscation of the device and denial of future  
2 requests to bring devices into the courtroom.

3 Our timing for today is from now until noon, with a  
4 break for lunch, and then from 1:00 until 5:00 today; and if  
5 necessary, to resume tomorrow at 9:30 on the same schedule.  
6 We'll begin with the Oversight Board's report.

7 Good morning, Mr. Bienenstock.

8 MR. BIENENSTOCK: Good morning, Judge Swain.

9 Martin Bienenstock of Proskauer Rose, LLP, for the  
10 Financial Oversight and Management Board for Puerto Rico.

11 Your Honor, in respect of the status report the Court  
12 requested, on the subject of the general status and activities  
13 of the Oversight Board, since the January hearing, the  
14 Oversight Board is in the midst of the annual fiscal plan  
15 process which, in turn, informs the annual budgetary process.

16 We've received the first draft of the Commonwealth's  
17 proposed fiscal plan and proposed budget, and both are under  
18 review internally. We expect the covered instrumentalities to  
19 file their proposed fiscal plans by early April.

20 The Oversight Board is working with the government to  
21 develop the fiscal year 2021 budget for the Commonwealth and  
22 covered instrumentalities. The Commonwealth submitted a  
23 proposed general fund and special revenue fund budget on  
24 February 14. The Oversight Board is reviewing the submission  
25 and holding budget meetings with key agencies of the

1 government to evaluate their submissions.

2 Separately, we provided authority for an additional  
3 260 million dollars to be used from the emergency reserve in  
4 the certified budget for response to the earthquakes, 20  
5 million of which was drawn in the month of February. Most  
6 critically, the funds are being put toward the temporary  
7 shelters where evacuees reside, and to provide schooling for  
8 children whose schools are not safe for use at this time.

9 The Oversight Board is also working closely with the  
10 government to analyze funding needs related to the coronavirus  
11 to ensure the Commonwealth task force established by the  
12 Governor and their related activities are adequately staffed.

13 In respect of ERS, on January 30, 2020, the First  
14 Circuit affirmed this Court's opinion, holding that section  
15 552 of the Bankruptcy Code prevents the bondholders' security  
16 interest from extending to post-petition revenues. Yesterday,  
17 the First Circuit denied the ERS bondholders' request for  
18 reconsideration en banc.

19 There has been a meet-and-confer process regarding  
20 other claims related to ERS, including administrative expense  
21 claims against ERS and the Commonwealth, between the  
22 bondholder groups and fiscal agent on one side, and the  
23 Oversight Board, AAFAF, and the Retiree and Creditors  
24 Committees and Special Claims Committee on the other side.  
25 The parties are discussing a consolidated schedule to proceed

1 on these remaining claims and aspire to file a schedule by  
2 consent shortly.

3 Yesterday, the First Circuit heard oral argument in  
4 the bondholders' appeal of this Court's Order denying  
5 appointment of the bondholders as trustees of ERS under  
6 Section 926(a) of the Bankruptcy Code to bring certain  
7 actions. The argument included much colloquy about whether  
8 the bondholders have a recourse claim under Bankruptcy Code  
9 Section 1111 that may figure prominently into the pending  
10 litigation. Discovery remains ongoing in the pending  
11 disputes regarding the scope of the bondholders' lien on ERS  
12 assets and whether the issuance of the ERS bonds was ultra  
13 vires.

14 In respect of PRIDCO's RSA and anticipated Title VI  
15 filing, PRIDCO has public bonds in the outstanding amount of  
16 approximately 150 million dollars in principal and 15 million  
17 dollars in accrued interest.

18 As AAFAF previously notified the Court in the October  
19 hearing, AAFAF has entered into a restructuring support  
20 agreement with over two-thirds of those bondholders. Since  
21 the last update at the January Omnibus Hearing, the Oversight  
22 Board sent the government a letter identifying areas where the  
23 Oversight Board believes PRIDCO's fiscal plan should be  
24 revised to meet PROMESA Section 201 certification  
25 requirements.

1           The government sent a letter in response and shared a  
2 revised fiscal plan with the Oversight Board professionals.  
3 The Board's professionals are continuing to analyze the  
4 revised fiscal plan and to work with AAFAF's professionals to  
5 understand the implementation of the RSA and resolve any  
6 outstanding issues.

7           The Oversight Board still has not formally been asked  
8 to approve the RSA as a qualifying modification. Should the  
9 proposed RSA be consistent with and meet the requirements of  
10 the certified fiscal plan, the Oversight Board would issue a  
11 voluntary agreement certification relating to the PRIDCO RSA.  
12 The parties would aim to commence a Title VI qualifying  
13 modification for PRIDCO approximately the second quarter of  
14 2020.

15           In respect of the relations among the Oversight Board  
16 and the Commonwealth and Federal Government, our relationship  
17 with the Governor and government remains collaborative, though  
18 they have been overwhelmed in response to the earthquakes in  
19 the south, thus delaying much of the other normal and  
20 important work.

21           In terms of the Federal Government relations, the  
22 Board met with President Trump's liaison to the Commonwealth  
23 Government for natural disaster recovery efforts on the  
24 island, Coast Guard Rear Admiral Peter J. Brown, to discuss  
25 recovery efforts.

1           The Oversight Board has been charged with providing  
2     input on the proposed use of disaster and recovery funding,  
3     and a new federal register publication, a HUD Vivienda Grant  
4     Agreement. The aim of the mandate is to ensure the use of  
5     those funds is consistent with both the certified fiscal plans  
6     and certified budgets.

7           We received a letter from Congressman Tom McClintock  
8     requesting information on the PROMESA Section 211 pension  
9     report, to which the Board responded that such analysis was  
10    conducted last year, and we enclosed for the Congressman a  
11    copy of the report.

12          Your Honor has also requested a status report in  
13    respect to the revised ADR procedures and an overview of the  
14    proposed disclosure statement and amended plan that the  
15    Oversight Board filed the other day. With the Court's  
16    permission, my partner, Brian Rosen, will provide those  
17    reports.

18           THE COURT: Thank you, Mr. Bienenstock.

19           MR. ROSEN: Good morning.

20           THE COURT: Good morning, Mr. Rosen.

21           MR. ROSEN: Good morning, Your Honor.

22          Your Honor, as Mr. Bienenstock said, I'm here to  
23    address two points: One with respect to the ADR, and the  
24    other with respect to the amended plan and disclosure  
25    statement.

1           With respect to the ADR, Your Honor, that's a very  
2 short presentation, because after the last hearing, Your  
3 Honor, we have revised the ADR procedures. We've had  
4 discussions with the Administrative Office. And yesterday  
5 morning, we filed, on notice of presentment, those revised ADR  
6 procedures. The day before, Your Honor, we also filed a  
7 revised and hopefully final form of the ACR procedures. Both  
8 of those, Your Honor, are on for presentment for March 10th  
9 before you.

10           Your Honor, while I'm here, though, I wanted to take  
11 an opportunity just to bring the Court up-to-date as to where  
12 we are on the overall claims resolution process. If you don't  
13 mind, I'll take a minute.

14           THE COURT: I'd be grateful.

15           MR. ROSEN: The balance will be dealt with by  
16 Ms. Stafford later on when we get to some objections, Your  
17 Honor.

18           Your Honor, as I've said before, we have  
19 approximately filed in this case over 173,000 claims. And  
20 those were broken down primarily between, among I'll say the  
21 Title III debtors, the Commonwealth of about 110,000; ERS of  
22 about 52,000; HTA of about 2,300; COFINA, about 3,100; and  
23 PREPA of about 4,500. To date, Your Honor, approximately  
24 68,000 claims have either been disallowed or will be  
25 disallowed upon the entry of final orders granting those

1 objections, and they represented approximately 4.2 billion in  
2 asserted liabilities.

3 Last week, Your Honor, the debtors and the Oversight  
4 Board filed additional objections to about 12,000 claims,  
5 totaling approximately 392 million dollars, and those are  
6 scheduled to be heard at the April Omnibus hearing. We  
7 currently anticipate, Your Honor, that approximately 45,000  
8 claims will be designated to the ACR process, thereby removing  
9 those from the claims registry and being dealt with through  
10 the administrative processes of the Commonwealth.

11 And as discussed at the January hearing, Your Honor,  
12 we expect that an additional 12,000 claims will be referred to  
13 the ADR process. Those are primarily, Your Honor, accounts  
14 payable and litigation related claims. And they are often, or  
15 in the most part, Your Honor, unliquidated in nature, so I  
16 can't even tell you what the magnitude of those liabilities  
17 might be.

18 So, Your Honor, that leaves approximately 28,000 left  
19 to be resolved in the Commonwealth, the ERS and HTA cases.  
20 With respect to COFINA, Your Honor, as I mentioned, there were  
21 approximately 3,100 claims.

22 And now, Your Honor, there are two claims left to be  
23 resolved. One already the Court resolved, and that is  
24 currently on appeal. That is the Proof of Claim that was  
25 filed by Mr. Peter Hein. And the other, Your Honor, is a



1 claim that was filed by the Lehman Trust. And that claim  
2 actually, Your Honor, is one that we are just waiting to  
3 reconcile pending a reconciliation of the Peter Hein  
4 objection. But there is no outstanding dispute with respect  
5 to that, Your Honor.

6 Your Honor, with respect to the Plan, as the Court  
7 knows, the Plan was filed on last Friday evening. And it  
8 contains -- well, it is the product of months and months of  
9 work through the help of the mediation team, and the mediation  
10 team leader specifically. And it incorporates the  
11 understanding that was reached, and it was incorporated in the  
12 Plan Support Agreement that was filed publicly on February  
13 9th.

14 The -- I don't want to go into all of the details  
15 associated with the Plan, Your Honor, because I don't think  
16 that's really what the Court needs to hear today. And I also  
17 just want to stick to the facts and not have everybody jump up  
18 behind me.

19 THE COURT: I did simply ask for an overview, but I  
20 think that's an important part of contextualization of much of  
21 today's proceeding.

22 MR. ROSEN: Absolutely, Your Honor. It deals with,  
23 Your Honor -- well, at the time of the entry of the PSA, Your  
24 Honor, we had about eight billion dollars worth of GO and PBA  
25 bonds that had signed on as what we referred to as initial PSA

1 creditors. At the same time, Your Honor, we invited anybody  
2 or any party in interest who had claims in excess of one  
3 million dollars to also sign up and join that process.

4 Today, Your Honor --

5 THE COURT: It sounds like we went off --

6 MR. ROSEN: Testing. One, two, three.

7 As of February 28, Your Honor, which was the closure  
8 of the joinder period, we had publicly announced that there  
9 were now a total of 10 -- or in excess of 10.5 billion dollars  
10 worth of GO and PBA bonds that had signed on to the PSA. So  
11 that brought the overall amount of those to 58 percent of the  
12 bonds outstanding, Your Honor.

13 There still is an opportunity for additional parties  
14 to join on, and by that I mean those parties who were parties  
15 at that time can purchase additional bonds. And so that  
16 number may, in fact, may go up.

17 There is also, Your Honor, the opportunity for  
18 people below one million dollars to get the benefit of it,  
19 and we call that in the Plan, Your Honor, the retail investor.  
20 And built into the Plan is the opportunity, to the extent  
21 that a retail investor class accepts the Plan, to get a bump  
22 up in the recovery just like the initial PSA creditors did.  
23 We did not want to leave anybody out of that opportunity, Your  
24 Honor, so through the negotiations with the mediation team and  
25 the PSA creditors, Your Honor, we've included that opportunity

1 for all parties, either above the million previously or now  
2 below the million pursuant to the solicitation process when  
3 the Court approved that to go forward.

4 Your Honor, the Disclosure Statement also was filed  
5 last week, and that has obviously a lot of information  
6 contained in it, as I think some of the people who have  
7 responded to the Amended Report that was filed have indicated  
8 the page length that they thought it would be. It is, Your  
9 Honor, a very complicated document. I will say that. But it  
10 is an extremely comprehensive document, and the changes, Your  
11 Honor, most notably from what the Court received in September  
12 when the initial plan was filed and initial disclosure  
13 statement was filed, there are updates to the information.

14 Obviously this is updated for the new plan that is  
15 out there. There's updated information with respect to the  
16 cash accounts balances as of December 31. There's updated  
17 information with respect to the various litigations, and  
18 there's other information, including the effect of the  
19 earthquakes upon the Commonwealth of Puerto Rico and the  
20 people of Puerto Rico.

21 At the same time, Your Honor, we filed a very  
22 comprehensive motion to approve the Disclosure Statement and  
23 approve solicitation procedures in connection with what we  
24 hope to be, Your Honor, the ultimate approval of the  
25 Disclosure Statement. This is in addition to the original

1 scheduling motion that we had filed with respect to the  
2 Disclosure Statement, which was something that we did and the  
3 Court approved, Your Honor, in the context of the COFINA Plan  
4 that was confirmed and consummated last year.

5 Those -- that comprehensive disclosure statement and  
6 solicitation procedures, Your Honor, is on the calendar for  
7 the June 3rd Omnibus hearing.

8 THE COURT: You are proposing to -- actually, that's  
9 right. You filed your motion with June 3rd as the hearing  
10 date?

11 MR. ROSEN: We did, Your Honor. Absolutely.

12 Your Honor, we do envision that, in the interim, we  
13 will probably file another motion to set up more procedures  
14 associated with the discovery process that may go on in  
15 connection with the confirmation, because we wanted to move  
16 easily and have -- let everybody have an opportunity to  
17 participate, and so that there are no blips or bumps in the  
18 road as we go down the path to -- what we hope for is a  
19 confirmation hearing later this year.

20 We will be discussing those issues again, Your Honor,  
21 with the mediation team leader, and hopefully there will be a  
22 consensus as to how we can move forward with respect to those.

23 Your Honor, unless you have any questions, that would  
24 be my presentation.

25 THE COURT: Thank you, Mr. Rosen.

1 MR. ROSEN: Thank you, Your Honor.

2 THE COURT: Is there -- so, Mr. Rapisardi.

3 Thank you.

4 Good morning, Mr. Rapisardi.

5 MR. RAPISARDI: Good morning, Your Honor. Thank you  
6 once again for giving us the opportunity to address the Court  
7 regarding the status of AAFAF's efforts in these Chapter 11  
8 cases.

9 Your Honor, I will give some general overview  
10 comments, and Mr. Marini will address the Court with respect  
11 to the specifics as to disaster relief funding. And there's  
12 one issue about a certain unauthorized claim, he'll address  
13 that as well.

14 Your Honor, since the last report, AAFAF has  
15 accomplished the following. Last Friday, as Mr. Bienenstock  
16 alluded to, the government submitted a revised fiscal plan for  
17 the Commonwealth as requested by the Oversight Board. The  
18 fiscal plan generally updates the Board's May 2019 Certified  
19 Fiscal Plan to reflect the fiscal year 2020 budget and OMB's  
20 recommended fiscal 2021 budget.

21 In addition, although the government currently does  
22 not support the Board's PSA with the GO bondholders, the  
23 government's fiscal plan does reflect a forecast period over  
24 20 years, through fiscal year 2039, to align with the maturity  
25 of the new bonds that are contemplated and proposed under the

1     PSA and Plan of Adjustment that's just been filed.

2             In addition, the Government of Puerto Rico has worked  
3     closely with federal officials in recent months to accelerate  
4     the release of disaster relief aid amid past delays and  
5     setbacks. In February, the Puerto Rico Government met with  
6     the Coast Guard Admiral, Peter J. Brown, as Mr. Bienenstock  
7     alluded to, who is the Trump administration's liaison for  
8     natural disaster recovery efforts in Puerto Rico, with the  
9     goal of establishing approved cooperation and trust between  
10    the Puerto Rico Government and the Federal Government  
11    regarding relief efforts.

12            After his discussions with the government, Admiral  
13    Brown issued a statement noting that Puerto Rico's "Reputation  
14    seems to lag the reality." And that both the Puerto Rico  
15    Office for Recovery, Reconstruction and Resilience and the  
16    Puerto Rico Housing Department have implemented "very strong  
17    control mechanisms to counter any attempts on corruption or  
18    diversion of funds."

19            AAFAF hopes that this renewed dialogue will  
20    facilitate the timely release of both past and future  
21    allocations of federal funding for Puerto Rico that will be  
22    necessary to strengthen Puerto Rico's infrastructure and  
23    economy.

24            It bears worth mentioning, Your Honor, that not  
25    withstanding the release of existing federal emergency funds

1 or the future appropriation of additional federal funds,  
2 additional private investment in Puerto Rico's aging  
3 infrastructure will be crucial to its economic sustainability.  
4 Also, Your Honor, the government strongly believes that to the  
5 extent additional resources exist upon emergence from Title  
6 III, or become available at some point in the future, its  
7 first priority must be to target those areas which are most  
8 critical to Puerto Rico's future economic competitiveness and  
9 growth.

10 AAFAF and the Oversight Board have been working  
11 closely together on ongoing litigation with creditors to  
12 address key issues necessary to resolve these cases. And I  
13 concur with Mr. Bienenstock's observation that the  
14 relationship between the Oversight Board and AAFAF continues  
15 to be collaborative, although we have the opposition at this  
16 time on the Plan.

17 Notably, AAFAF is fully aligned with the Board on all  
18 major litigation items, and the loan issue is with respect to  
19 implementation of Act 29, which we still have some fundamental  
20 differences. And Your Honor, in fact, will hear arguments  
21 concerning this issue today, including the worrisome economic  
22 and human impact striking down Act 29 could have on  
23 municipalities.

24 With that, Your Honor, unless you have any questions  
25 of me, I will turn it over to Mr. Marini for some more

1 detail.

2 THE COURT: Thank you, Mr. Rapisardi.

3 MR. RAPISARDI: Thank you, Your Honor.

4 THE COURT: Good morning, Mr. Marini.

5 MR. MARINI BIAGGI: Good morning, Your Honor. Luis  
6 Marini of Marini Pietrantoni Muniz for AAFAF.

7 Your Honor, I'll address the Court on two matters  
8 that Your Honor requested. Number one, the funding and status  
9 of post Maria and earthquake related relief and reparations,  
10 and I'll focus on the status of schools and shelters. And  
11 two, after that, I'll get into AAFAF's investigation of the  
12 individual who filed an unauthorized proof of claim on behalf  
13 of the Treasury.

14 Your Honor will recall that AAFAF has provided two  
15 status reports already on disaster relief relating to the  
16 earthquake and the hurricanes, so I'll limit my presentation  
17 today to only material new developments since the last status  
18 report.

19 THE COURT: The last time we were here physically,  
20 you had indicated you were going to file some supplemental  
21 details. I don't remember seeing that. Did you file  
22 something?

23 MR. MARINI BIAGGI: No, Your Honor. I apologize. We  
24 have been gathering the data, but I'll present it to the Court  
25 today, the details on the schools and the shelters.



1 THE COURT: Thank you.

2 MR. MARINI BIAGGI: Before getting to it, I'll just  
3 mention to the Court that the data that we have that we're  
4 going to be presenting today, AAFAF obtained it from PREPA,  
5 from HTA, from the Puerto Rico National Guard, from the  
6 Department of Housing, Education, and COR3.

7 In terms of the earthquakes, Your Honor, that started  
8 on December 28th, they have continued, and they remain  
9 concentrated in the southern part of Puerto Rico. During  
10 February alone, there were about 275 quakes of 3.0 or higher.

11 Big picture, and I'll get into these numbers in more  
12 detail as part of my presentation, currently there are less  
13 than 400 reported refugees in shelters. That's down from a  
14 high of 9,000 during January. There are approximately 2,500  
15 uninhabitable houses. Approximately 92 percent of schools  
16 have reopened. And FEMA has made a preliminary estimate of  
17 initial mitigation and repair damages as a result of the  
18 earthquakes, and they have estimated that at 782 million.

19 Funding and reconstruction efforts are ongoing. When  
20 we gave our last report, there were 16 municipalities that  
21 included, as of that time, in the federal major disaster  
22 declaration signed by FEMA and President Trump. Since then,  
23 on February 6, 2020, FEMA included Governor Vazquez' request  
24 to include additional municipalities, and that included  
25 Arecibo, Ciales, Hormigueros, Juana Diaz, Las Marias,

1 Mayaguez, Morovis, Orocovis and Sabana Grande.

2 As of now, there are 25 municipalities throughout  
3 Puerto Rico in the southern and southwestern part that have  
4 been impacted by the earthquakes and have been designated in  
5 the federal major disaster declaration. Through these  
6 efforts, what that means is FEMA's public and private funding  
7 is now available to the municipalities to provide assistance  
8 to individuals with location efforts, rental subsidies,  
9 housing, and to provide assistance to the government.

10 As to the shelters, Your Honor, as a result of the  
11 earthquakes during the height of January 2020, there were up  
12 to 9,000 refugees in shelters throughout the southern and  
13 southwestern part of Puerto Rico. As of the last data that we  
14 had yesterday, this number has been reduced to approximately  
15 393 persons. Of these, approximately 93 are sheltered in  
16 government base camps run by the Puerto Rico National Guard.

17 There are four base camps throughout Puerto Rico:  
18 One in Yauco that has seven persons; one in Guayanilla has 33;  
19 one in Ponce has 17; and one in Penuelas that has 35. The  
20 base camps have laundry facilities, restrooms, showers,  
21 medical clinic and pharmacy, food services. Three meals are  
22 served a day, seven days a week.

23 In addition to the base camps, there are  
24 approximately 300 additional private -- 300 additional  
25 refugees in private camps throughout Puerto Rico.

1 Intergovernmental services are being provided to the refugees  
2 both in the government run base camps and in the private  
3 shelters. Through these services, various government units,  
4 such as the Puerto Rico Department of Housing, Family,  
5 Emergency Management Services, FEMA, and others work in  
6 conjunction to find temporary or permanent housing for the  
7 refugees.

8           Housing is available through government public  
9 housing programs and through FEMA's rental subsidies -- rental  
10 program. FEMA has received approximately 35,000 claims for,  
11 among other things, damages to houses as a result of the  
12 earthquakes. To date, approximately 30,000 houses have been  
13 inspected, or 87 percent of claims.

14           FEMA has provided private assistance to families, and  
15 disbursed, as of now, approximately 23 million for rental  
16 subsidies, home repairs, home replacement and other claims.  
17 Rental subsidies have been provided to about 6,600 families.

18           As to the schools, since my last report to the Court,  
19 the Commonwealth has made substantial progress in inspecting  
20 and opening schools for classes and in providing alternatives  
21 to students. The Commonwealth has approximately 857 schools.  
22 All schools have been inspected by licensed engineers,  
23 conducting visual inspections of structural and other repairs.

24           As of yesterday, as of March 3rd, the Department of  
25 Education estimates that approximately 787 schools, or 92

1 percent of all schools have been reopened. The Department of  
2 Education estimates that approximately 56 schools will need  
3 additional repairs prior to reopening. The majority of these  
4 schools are located in the southern and southwestern part of  
5 Puerto Rico.

6 As of -- the last data that we had, as of yesterday,  
7 the Department of Education estimates that approximately 78  
8 percent of the total students enrolled for the academic year  
9 are attending the schools that have already reopened. The  
10 Department of --

11 THE COURT: And so, for the students of the schools  
12 that haven't reopened, is there alternative programming?

13 MR. MARINI BIAGGI: There are, Your Honor. There are  
14 40 schools that haven't reopened. The Department of Education  
15 has worked and has put in place alternatives for those  
16 students, and they essentially involve three methods. One,  
17 renting and securing alternate venues. That has been in  
18 place, for example, in Ponce, where through those alternative  
19 venues, the vast majority of students whose schools have  
20 closed are now being provided access to schools.

21 Second, the Department of Education has put in place  
22 hundreds of tents through municipalities in the southern  
23 region of Puerto Rico. Most of those tents have been put in  
24 place or are being put in place this week, with others to  
25 follow next week and the week after. Through those mobile

1 classrooms, the Department of Education estimates that once  
2 they're put together, all students whose schools have closed  
3 would have a place to go to school.

4 And third, the Department of Education has made  
5 arrangements with universities throughout Puerto Rico to  
6 provide access to online classes. As of the last data that I  
7 had, which is as of the end of February, about 3,500 students  
8 were enrolled in the online classes as well.

9 So I can go into more detail, but the three main  
10 methods are those. Most have been put in place and are being  
11 put in place this week, with additional tents to follow next  
12 week and the week after.

13 THE COURT: And the tents, may I assume, have  
14 electricity service and internet connectivity and --

15 MR. MARINI BIAGGI: Correct.

16 THE COURT: -- sanitary facilities?

17 MR. MARINI BIAGGI: Correct.

18 THE COURT: And those sorts of things?

19 MR. MARINI BIAGGI: Correct. And also food services  
20 as well.

21 Unless Your Honor has any questions on the schools,  
22 I'll move on to a brief update on PREPA.

23 THE COURT: Thank you. Please move on.

24 MR. MARINI BIAGGI: As to PREPA, Your Honor, we  
25 briefly provided an update during our last presentation. The

1 earthquake and aftershocks caused significant damage to  
2 PREPA's baseload generation, as well as damage to its  
3 independent generation partners.

4           We provided previously an update on the Costa Sur  
5 Power Plant. What I can mention is that PREPA has completed  
6 the first phase of assessment for visible damage to, for  
7 example, tanks, boilers and structures. A second phase is now  
8 under way, where PREPA will have a more detailed and technical  
9 assessment for nonvisible damages to the infrastructure to  
10 better assess the total cost of the repairs, damages,  
11 insurance coverage, and the need to do potential rebuilding.

12           During my last presentation, I gave an update to the  
13 Court on a potential RFP that PREPA was conducting. That RFP  
14 to solicit up to 500 megawatts of emergency and new generation  
15 to help make up at least some of the approximately 800  
16 megawatts in power lost in Costa Sur is under way. PREPA is  
17 awaiting approval of the RFP by the Puerto Rico Energy Bureau,  
18 and is working with FEMA to secure project funding. PREPA  
19 expects to issue the RFP during March, as soon as the Puerto  
20 Rico Energy Bureau approves the RFP.

21           Now, as to hurricane relief, two material new  
22 developments have occurred since my last presentation. One my  
23 colleague, Mr. Rapisardi, already alluded to, that the Federal  
24 Government named Coast Guard Admiral Peter Brown as the  
25 administrator's liaison. Progress has been made, as has been

1 articulated by Mr. Rapisardi, through the remarks that the  
2 Admiral made after a meeting with the Governor, and that's  
3 showing progress in the month since the nomination.

4 And second, in terms of additional funding since our  
5 last report, over 36 million has been obligated during  
6 February for about 164 projects relating to the recovery and  
7 reconstruction of Puerto Rico. These are funds to repair  
8 roads, bridges, parks, recreational facilities, public  
9 building and waste removal.

10 Finally, Your Honor, unless Your Honor has questions  
11 on the disaster relief and the update that I gave, I'll move  
12 on to a brief update on the unauthorized claim that was  
13 filed.

14 THE COURT: As to the funds that have now been  
15 obligated, is there any concrete expectation of when they will  
16 be disbursed?

17 MR. MARINI BIAGGI: Yes, Your Honor. For each  
18 project, I understand it's different, because it depends on  
19 whether there are plans and permits in place, but they can be  
20 disbursed as soon as the project is approved. So the  
21 expectation is that they will start, they will go from project  
22 to project immediately.

23 THE COURT: Thank you.

24 MR. MARINI BIAGGI: Now, Your Honor, as to the  
25 incident involving the individual that filed a proof of claim

1 on July 9th, 2018, claiming to be an accountant for the  
2 Treasury Department and filing a claim on behalf of the  
3 Official Committee of Retirees for about 58.5 million dollars,  
4 AAFAF, with Treasury, did an investigation on the claim.

5           The Proof of Claim contained no supporting documents.  
6 As Your Honor is aware, the Oversight Board objected on that  
7 basis to the claim. As part of our investigation, of AAFAF's  
8 investigation and coordination with Treasury, the Treasury  
9 Department confirmed that Ms. Vega, the filer, is not or was  
10 not an employee or authorized agent of the Treasury  
11 Department. The Treasury Department did not authorize this  
12 person to file a claim on its behalf. Treasury attempted to  
13 reach Ms. Vega, as well as professionals for Treasury and  
14 AAFAF, on multiple occasions through the information contained  
15 in the proof of claim, but no contact has been able to be  
16 made.

17           AAFAF continues to work with Treasury and Prime Clerk  
18 to see if it identifies any other instance where a similar  
19 situation happens. And if it does, we will alert the Court.  
20 But that's information we have. We have tried to contact the  
21 individual and have been unable to.

22           THE COURT: Have you referred the matter to the  
23 authorities as a potential bankruptcy fraud, so that law  
24 enforcement might be looking for this person, or do you not  
25 feel that's appropriate?



1 MR. MARINI BIAGGI: From the knowledge that I have,  
2 Your Honor, that has not been done. I believe we wanted to  
3 reach the individual first, but we haven't. So that's  
4 something that maybe will happen in the future.

5 THE COURT: All right. And I take it if there are  
6 further updates in that regard, you'll let us know --

7 MR. MARINI BIAGGI: We will.

8 THE COURT: -- as we go forward with the Omnis?

9 MR. MARINI BIAGGI: We will, Your Honor.

10 If Your Honor doesn't have any other questions,  
11 that's the update that I have for AAFAF.

12 THE COURT: Thank you very much.

13 MR. MARINI BIAGGI: Thank you, Your Honor.

14 THE COURT: Did anyone else wish to be heard in  
15 connection with status reports?

16 (No response.)

17 THE COURT: Then we will move on to the Fee Examiner.  
18 I understand that Ms. Stadler is in New York. Yes.

19 Good morning, Ms. Stadler.

20 MS. STADLER: Today's presentation requests the  
21 Court's approval of 20 interim and one final fee application  
22 for fee periods through and including the seventh interim fee  
23 period, June through September of 2019.

24 The Fee Examiner's findings and recommendations are  
25 set forth in the Fee Examiner's report and exhibits. Of note

1 in this report is the consensual resolution of the Fee  
2 Examiner's objection to the fifth interim fee period  
3 application of Duff & Phelps, which was docket number 8862 in  
4 the 3283 case. With the Fee Examiner's report and  
5 recommendations today, the Fee Examiner withdraws that  
6 objection and recommends Court approval of the Duff & Phelps  
7 fee applications in adjusted amounts as set forth on Exhibit A  
8 to the report.

9 Briefly addressing the Cobra objection, which appears  
10 next on the Agenda, the Fee Examiner recommends that the Court  
11 will -- overrule that objection, at least as it relates to the  
12 five interim fee applications recommended for approval today.  
13 As the Court well knows, the Fee Examiner is charged with  
14 applying the standards set forth in PROMESA Section 316, which  
15 includes factors such as the time spent, rates charged,  
16 necessity and benefit, and reasonableness. The Fee Examiner's  
17 review also incorporates the U.S. Trustee large case fee  
18 guidelines, the local rules, and the fee and expense  
19 guidelines promulgated by both AAFAF and the FOMB. And in  
20 some cases, you need provisions of an individual  
21 professional's engagement agreements with their clients.

22 Nothing in the Cobra objection addresses any of these  
23 factors. It appears to be a blanket objection to the payment  
24 of any PREPA professional based on a dispute over Cobra's own  
25 administrative expense claim.

1           The solvency of a debtor, which is the only  
2 substantive basis for the objection stated, is not a factor  
3 under PROMESA Section 316, Bankruptcy Code Section 330, or any  
4 of the guidelines governing the award of interim compensation.  
5 As such, once again, the Fee Examiner recommends the Court  
6 overrule that objection as it relates to the five interim fee  
7 applications included in the Court -- in the recommendations  
8 to the Court today.

9           And I'm happy to answer any questions the Court may  
10 have about these or any other fee-related matters.

11           THE COURT: I have a couple of questions generally  
12 about fee-related matters, and I do appreciate your very  
13 comprehensive report on the recommendations.

14           I think we have a little feedback here on the audio  
15 in the courtroom, so give me a moment.

16           Well, can you hear me clearly there, Ms. Stadler?

17           MS. STADLER: I can, yes.

18           THE COURT: All right. So I will just go on.

19           In your report on page two, the Fee Examiner notes  
20 that duplicative services and inefficient staffing remain  
21 challenges for some professionals.

22           I would be grateful if you would just give me a  
23 little bit of insight into how the Fee Examiner generally goes  
24 about evaluating and addressing fee applications that present  
25 such issues.

1 MS. STADLER: Yes, Judge.

2 This issue arises in two primary contexts in our  
3 process. The first is a result of the statutory construct  
4 which creates the Oversight Board as the debtor in possession  
5 agent, but also relies on AAFAF and the government agencies  
6 themselves to provide substantive information.

7 As a result of that statutory construct, the debtors  
8 in this case have two sets of professionals instead of one.  
9 It's understandable, given the structure of PROMESA and the  
10 unique issues that arise in this case and that have arisen  
11 with respect to the Government of Puerto Rico, but we do pay  
12 close attention to the work of professionals for both the  
13 Oversight Board and AAFAF to ensure that neither is  
14 duplicating the work of the other.

15 For example, the claims objection process that  
16 Proskauer primarily handles generally does not overlap into  
17 AAFAF professionals, except to the extent that Mr. Marini just  
18 reported on some unique claims issues. So that's one way that  
19 we try to assure ourselves and assure the Court that everyone  
20 is staying in their lane and fulfilling their statutory role,  
21 doing what needs to be done to responsibly administer these  
22 cases, while not overworking and -- overlooking each other's  
23 work to an excessive degree.

24 The other place that we see a potential for overlap  
25 is in situations where more than one professional for an

1 individual party in interest is working on the same matter.  
2 The example that comes to mind is the Special Committee of the  
3 Oversight Board, which has its own counsel, its own financial  
4 advisors, and of course is co-counsel with the Creditors  
5 Committee in prosecuting avoidance actions.

6 We have been very careful since the retention of  
7 Special Committee counsel to make sure that the work of the  
8 Special Committee's professionals is not being duplicated or  
9 overseen, to an excessive degree, by the Oversight Board's  
10 counsel and other professionals itself.

11 So we do a fairly deep dive into the time records,  
12 and we often review reporting, pleadings filed by these  
13 counsel and other professionals to, again, ensure that  
14 professionals are staying in their lanes, that they're not  
15 overreaching and trying to expand the scope of their  
16 representation beyond that which the Oversight Board has  
17 specifically authorized.

18 And to some extent, the applications that you see  
19 recommended for adjournment in each of our reports, many of  
20 those are recommended for adjournment because we are asking  
21 specific questions about lots of different issues, but  
22 particularly, the duplication issues that you just  
23 recommended.

24 And when we identify potential issues, we give the  
25 professionals substantial time and leeway to provide

1 information responsive to those inquiries, and then to do our  
2 due diligence and satisfy ourselves that those explanations  
3 make sense in the overall context of the case and our fee  
4 process.

5 So hopefully that provides some information that the  
6 Court was interested in. And I can elaborate further, if  
7 you'd like.

8 THE COURT: That was very helpful. It is obviously  
9 important with so many different professionals, so many  
10 different entities working together, and the fact that we are  
11 working with a Commonwealth that is in financial distress, to  
12 make sure that all of the resources are used appropriately; to  
13 make sure that these proceedings are efficient, that issues  
14 that need to be addressed are addressed properly; but that  
15 there is as little waste and duplication as possible in the  
16 expenditure of the funds of the debtors on professional fees.

17 And so I thank you for giving me reassurance of your  
18 continued vigilance, and I think it is helpful to all those  
19 who were listening to understand the degree and granularity of  
20 the examination of the applications that are submitted. So I  
21 thank you for that.

22 I have one other general question for you about  
23 professional fees and review. And so as of the beginning of  
24 the year, there have been a number of notices filed of fee  
25 increases, some of which at orders of magnitude that appear

1 quite significant, with large differentials from the preceding  
2 billing rates. And so I wonder if you have any preliminary  
3 views with respect to the disclosed increases, as to propriety  
4 or just as to your methodology of how you will go about  
5 evaluating those.

6 MS. STADLER: Yes, Judge. The January -- for the  
7 most part, the January 2020 rate increases will appear in the  
8 eighth interim fee period, which will cover October of 2019  
9 through January of this year. In connection with our  
10 reporting on those applications, we will quantify not only the  
11 amount of rate increases -- or the amount of fees attributable  
12 to rate increases at the beginning of this year, but also the  
13 cumulative impact of the rate increases.

14 So every letter report that goes out to a  
15 professional includes a section that addresses rate increases,  
16 if they've had any; quantifies the economic impact of the rate  
17 increases, both by fee period and cumulatively; and then  
18 recommends an adjustment downward to the guidelines and  
19 standards that we discussed at length in connection with the  
20 presumptive standards motion.

21 That's the baseline, and that's where the discussions  
22 start. The notices themselves give us the opportunity to  
23 prepare our data processing system for that analysis when the  
24 applications come in. But we do not typically raise issues  
25 with professionals when they give notice of rate increases,

1 other than just to prepare ourselves for incorporating the new  
2 rates into our data systems. We comment and report on them  
3 when fees that are impacted by those rate increases are  
4 actually requested, which, as noted, would be in connection  
5 with the eighth interim fee period.

6           Since the presumptive standards discussion took place  
7 and the presumptive standards Order went into effect, we've  
8 seen two positive developments. One is fewer rate increases  
9 imposed in general, and the other is very little pushback in  
10 negotiations when we identify fees that are the result of rate  
11 increases beyond what our presumptive standards are.

12           Many, many professionals identify the -- review our  
13 report and agree that with respect to particular individuals  
14 and their timekeeping roster, the rates are outside the  
15 guidelines. In some cases, professionals can and do justify  
16 departures from those guidelines. A great example of this is  
17 when an associate becomes a partner or a shareholder, the Fee  
18 Examiner recognizes that that promotion and seniority is  
19 reflective of a certain amount of skill and experience that  
20 may justify a rate increase beyond what normal inflation or,  
21 you know, cost of doing business would dictate.

22           There are other situations. In many instances,  
23 professionals representing AAFAF, including PREPA  
24 professionals, have individual engagement agreements with  
25 their clients that set forth specific rates that are



1 authorized by the retention. O'Melveny & Myers, for example,  
2 represents both PREPA and AAFAF and has different contracts  
3 that govern each of those representations.

4 In some instances, the rates are not identical  
5 between the two, and so we ask, to the extent one set of rates  
6 is higher than the other, what the rationale for that is. If  
7 the rationale makes sense, then we use the rates in the  
8 contract as the starting point for our rate increase analysis.  
9 And then we would have two tracks or three tracks or three  
10 different rate analyses, depending on the work and which  
11 contract it's allocated to by professional. But we do pay  
12 close attention to those deviations.

13 There are, in many cases, justifications,  
14 particularly in the government setting, for different rates  
15 being charged in different matters. And of course all of the  
16 inquiry is overlaying by the reasonableness factors that I  
17 discussed in my presentation under both PROMESA and the  
18 Bankruptcy Code.

19 THE COURT: Thank you, Ms. Stadler.

20 Now, is there anyone else who wishes to be heard as  
21 to Cobra since Ms. Stadler has made her remarks concerning the  
22 Cobra objection?

23 MR. VAN DERDYS: Your Honor, for the record, Fernando  
24 Van Derdys.

25 THE COURT: You have to speak from the microphone,

1 because no one can hear you.

2 MR. VAN DERDYS: Yes. Fernando Van Derdys on behalf  
3 of Cobra. I believe Mr. Stephen Baldini from Akin Gump will  
4 be making arguments by video conference now after this matter,  
5 according to the schedule I saw.

6 THE COURT: Yes. The Agenda had listed the Cobra  
7 matter as the next matter. And so I think we are ready to  
8 address that now, and then I will circle back with respect to  
9 the Fee Examiner's proposed orders, approving matters the Fee  
10 Examiner had approved, because dealing with the Cobra issue is  
11 part of that, if you will.

12 MR. VAN DERDYS: Thank you. Okay.

13 THE COURT: And so --

14 MR. BALDINI: Thank you, Your Honor. Would you like  
15 to hear from Cobra now?

16 THE COURT: Yes, please.

17 MR. BALDINI: Okay. Steve Baldini from Akin Gump on  
18 behalf of Cobra Acquisitions, LLC.

19 Your Honor, if Cobra, as you're aware, is an  
20 administrative creditor, PREPA and Cobra contracted post  
21 filing --

22 THE COURT: I'd ask that you --

23 MR. BALDINI: -- for Cobra to handle the electric  
24 affairs --

25 THE COURT: Sir. Mr. Baldini.

1 MR. BALDINI: -- to Puerto Rico's electric grid.

2 THE COURT: Mr. Baldini.

3 MR. BALDINI: Yes. Yes, Your Honor.

4 THE COURT: Yes. I'm just going to ask you to speak  
5 a little more slowly, because the sound feed to here is a  
6 little bit fuzzy.

7 MR. BALDINI: Will do, Your Honor.

8 THE COURT: Thank you.

9 MR. BALDINI: Cobra currently claims that  
10 approximately 250 million dollars is due and owing on those  
11 contracts. In -- Cobra's motion for allowance of its  
12 administrative claim has been stayed, and we're not here to  
13 litigate that motion. That stay is currently in place until  
14 June 3rd, 2020, by Order of this Court.

15 We do anticipate that the debtors will come back and  
16 ask for further extensions, because one of the bases for the  
17 request for stay is a criminal trial that, since that stay was  
18 put in place by the Court, has now been set for trial. And  
19 it's not set until January of 2021 at the earliest.

20 Rather, Cobra's here because we believe that  
21 administrative creditors of the debtor should be treated  
22 evenly and equitably, which would result in either reduced or  
23 no payments to professionals on an ongoing basis, or an  
24 increase to the holdback amount.

25 Your Honor, there's no dispute that under PROMESA, a

1 confirmed plan requires payment in full in cash of all claims  
2 under the Bankruptcy Code, Section 507(a)(2), which are  
3 allowed administrative claims, and that those claims enjoy the  
4 same priority and treatment as each other.

5 Your Honor, am I going at an okay pace?

6 THE COURT: I'm sorry. I didn't hear your last  
7 remark.

8 MR. BALDINI: Am I going at an okay pace? Can you  
9 hear?

10 THE COURT: Yes, that's fine for me.

11 And is the court reporter having any difficulty?

12 COURT REPORTER: No, Your Honor.

13 THE COURT: You're fine for the court reporter,  
14 too.

15 MR. BALDINI: Okay. Just wave or gesticulate if I'm  
16 going too quickly. I'm sorry.

17 THE COURT: All right.

18 MR. BALDINI: There is also no dispute that this  
19 Court has discretion in allowing interim payments of  
20 professionals, and under Section 316 of PROMESA, on a motion  
21 of any party, the Court may award less compensation than the  
22 amount requested. Section 316 says that, in doing and  
23 reviewing applications, the Court should look at, quote, all  
24 relevant factors, and then lists an enumerated set of criteria  
25 that are included in the overall relevant factors.

1           THE COURT: Well, is there anything in the reference  
2 to all relevant factors and examples in 316 that would  
3 implicate any sort of financial ability test at a point during  
4 the Title III proceeding for the debtor?

5           MR. BALDINI: Your Honor, in the criteria listed, we  
6 don't believe there is. We believe that those criteria are  
7 not exclusive, and that all relevant factors should include  
8 the Court's review of the overall administration of the  
9 estate, including the treatment of administrative claimants  
10 and the potential prejudice of putting some in one bucket and  
11 others in another.

12           But with respect to your question, do the cri -- the  
13 specific criteria listed include the issue you raised? They  
14 do not.

15           THE COURT: The arguments that you've made, aside  
16 from this gloss on 316, which is a little bit different, I  
17 think, from the written arguments, the principal arguments in  
18 your written submission seem to draw on Chapter 11 and Chapter  
19 7 cases that recognize the concept of administrative  
20 insolvency. And particularly in Chapter 11, there's an issue  
21 as to whether conversion to a 7 is appropriate when there's a  
22 demonstration of administrative insolvency.

23           It's been a little difficult for me to perceive a  
24 legal basis for importing that concept and that sort of  
25 template into PROMESA, because a Title III case can't be

1 converted to a liquidation case. Either the plan's confirmed  
2 and the administrative expenses are paid, or the case fails  
3 and nothing is discharged.

4 And so, you know, if there's anything further that  
5 you want to offer as to an interim or periodic administrative  
6 solvency test as being appropriate in PROMESA, I'd be glad to  
7 hear it.

8 MR. BALDINI: No, Your Honor.

9 At the time that we made this motion, we were living  
10 in a world where the debtor had said to us and to the Court  
11 that PREPA does not have immediate or clear access to funds  
12 necessary to pay Cobra's purported claims without taking those  
13 funds away from operating expenses.

14 THE COURT: And it said that in reference to Federal  
15 Government disaster repair funding, yes?

16 MR. BALDINI: Correct.

17 We're also living in a world where the debtor  
18 currently is -- has a motion pending before you which would  
19 significantly increase the administrative expenses to the  
20 estate. And we believe, in light of those issues, while the  
21 debtor may or may not be solvent now, and we understand that  
22 the debtor has submitted a declaration at this point in time  
23 that says it is, that the overall considerations of equity and  
24 fairness in treating administrative claimants remains the  
25 same, regardless of whether at this point in time it is

1 | administratively solvent, or at another point in time it may  
2 | or may not be.

3 |           THE COURT: Thank you. You can go on, if you like.

4 |           MR. BALDINI: So, Your Honor, we see no reason why  
5 | the debtor should treat administrative creditors differently  
6 | as a matter of equity and why the Court, in its discretion,  
7 | should not either suspend payments or increase the holdback  
8 | amounts.

9 |           And in response to our motion, the respondents have  
10 | and will tell you a few things. The first is that they will  
11 | say Cobra should be treated differently. The professionals  
12 | should get payment. Cobra shouldn't, because Cobra's claims  
13 | are disputed.

14 |           And they point to three particular disputes, which  
15 | they have raised in the past, one of which is the ongoing  
16 | criminal case which I mentioned earlier. The second is a  
17 | report from FEMA on the reasonableness of certain of PREPA's  
18 | contracts.

19 |           And then the third is disputes with respect to the  
20 | actual performance of the contracts in question, although  
21 | they do acknowledge in the declaration that certain portions  
22 | of those contracts are, in fact, undisputed. And if you read  
23 | the reply papers, they're littered with hypotheticals about  
24 | what might happen, if and when this case is no longer stayed.

25 |           If the Court finds that Cobra is not entitled to

1 payment, PREPA might have claims against Cobra. Findings in  
2 the criminal case may serve as a defense to Cobra's claims,  
3 and PREPA may even have claims against Cobra for disgorgement.  
4 This could give PREPA a defense to further payments.

5 Your Honor, theoreticals like this are true in the  
6 context of any contract dispute. And as the reply papers  
7 admit in their own -- the fees being paid to professionals are  
8 also subject to disgorgement in the event that there is later  
9 a dispute.

10 So given that in any contract dispute, either  
11 party -- the payee may at some point later have to disgorge,  
12 doesn't distinguish us from the professionals who are getting  
13 paid on an ongoing basis. And, therefore, we don't see a  
14 reason to distinguish us from those who are getting paid on a  
15 continuing basis.

16 Secondly, they will tell you that the professionals  
17 servicing PREPA are subject to a rigorous vetting process;  
18 that they've already negotiated fee arrangements; that they've  
19 already assisted in several notable achievements for the  
20 estate; and that withholding payments would create a chilling  
21 effect for other professionals in this proceeding.

22 Your Honor, while we're sympathetic to those points,  
23 they may as well be describing Cobra as well. Cobra went  
24 through a significant process to negotiate the terms of their  
25 agreements, including oversight by PREPA, the Central Office



1 of Recovery, the Office of Contracts and Procurement  
2 Compliance, and FEMA. Cobra achieved perhaps the greatest  
3 success in this entire proceeding to date by restoring the  
4 electrical grid and ensuring the debtor a source of  
5 significant revenue that it could use to administer the  
6 estate.

7           The payments to Cobra, as I said before, are subject  
8 to disgorgement, just as the payments to professionals are.  
9 So there is nothing in what they have said that would suggest  
10 that professionals should get paid while others are not.

11           And as to the supposed chilling effect, well, I think  
12 that applies equally as well, because if you're going to tell  
13 significant and important administrative contractors, who  
14 came out of pocket in order to perform on contracts with the  
15 debtor, that the debtor was going to find a legal reason to  
16 not satisfy those contracts, it will equally have a chilling  
17 effect on necessary administrative contractors to the debtors.

18           Finally, Your Honor, they'll talk about solvency, and  
19 I think you just asked the question, and so I won't go back  
20 into that. In light of these considerations, we don't see any  
21 reason why professionals should be paid and prejudice the  
22 rights of other administrative creditors who are not getting  
23 paid on an ongoing basis.

24           And I would add that if the Court finds that the  
25 relief sought is too drastic, we have suggested that the Court

1 increase holdback amounts, through professionals, currently at  
2 10 percent and 20 percent, until the quarterly true-ups.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Baldini.

5 Who else would like to -- Ms. McKeen.

6 MS. MCKEEN: Yes, Your Honor. Elizabeth McKeen of  
7 O'Melveny & Myers on behalf of AAFAF.

8 THE COURT: Good morning.

9 MS. MCKEEN: Good morning, Your Honor.

10 Your Honor, as I think our papers make clear, PREPA  
11 has not paid Cobra because of issues with Cobra, not issues  
12 with PREPA. PREPA has paid Cobra approximately 1.1 billion  
13 dollars to date, which is many multiples it's paid all other  
14 professionals in the aggregate.

15 And while Cobra claims that it's still owed  
16 approximately 240 million dollars for its services, in the  
17 meantime, as counsel was just discussing, its CEO has been  
18 indicted because of allegations that he was engaged in  
19 improper activities involving FEMA officials specifically  
20 involved in approving payments to Cobra.

21 In the indictment of the CEO of Cobra, it says that  
22 he provided things of value to a FEMA official in connection  
23 with Cobra's contracts. And the indictment goes on to allege  
24 that as part of the conspiracy, Cobra's CEO and FEMA employees  
25 worked to secure favorable treatment for Cobra as needed,

1 including specifically in connection with payments and the  
2 timing of payments to Cobra.

3 The indictment also alleges that a FEMA employee was  
4 negotiating a contract for employment with Cobra at the same  
5 time she was responsible for evaluating performance by Cobra  
6 under its contracts. That same defendant, since we filed our  
7 papers, has pled guilty.

8 As Mr. Davis of Greenberg Traurig pointed out at the  
9 last Omnibus hearing, the outcome of these outstanding  
10 criminal proceedings may, in fact, lead to invalidation of  
11 Cobra contracts under Puerto Rico law. They may give rise to  
12 claims against Cobra.

13 As the Court also knows, there is a pending OIG  
14 investigation. And wholly apart from the indictment, PREPA  
15 does have substantial disputes over the accuracy of the  
16 outstanding invoices. PREPA disputes about 80 percent of  
17 these invoices, about 200 million dollars worth.

18 There are a lot of bases for the objections that were  
19 detailed pretty specifically in the joint status update that  
20 was submitted before the last Omnibus hearing. These are the  
21 reasons that PREPA has not paid Cobra's outstanding invoices,  
22 not because of this false premise of administrative  
23 insolvency.

24 Obviously unhappy that it's not being paid, and  
25 undeterred by the indictment of its CEO, Cobra's response is

1 to now try to block other professionals in PREPA's case from  
2 getting paid. But parties with disputed administrative claims  
3 can't just shut down a debtor's case and prevent professionals  
4 from getting paid because they aren't getting what they want,  
5 when they want it. And they certainly shouldn't be able to do  
6 it based on factual and legal premises that are just not true.

7 Our briefs explain why, as a legal matter, the  
8 concept of administrative insolvency doesn't really apply in  
9 Title III, as I think the Court just correctly noted. But  
10 before I talk about that, I want to talk about why, on a  
11 fundamental level, the factual premise of the motion is simply  
12 incorrect.

13 Cobra relies on the proposition, or it states that  
14 PREPA is administratively insolvent because it needs federal  
15 funds to engage in emergency disaster repair. That's always  
16 been true. PREPA has always relied on the Federal Government  
17 for funding for emergency repairs that are necessitated by a  
18 major natural disaster.

19 Those disaster repair costs are entirely separate  
20 from ordinary course business operations. PREPA has over 400  
21 million dollars in cash on its balance sheet. That cash on  
22 hand alone dwarfs the amount of potential liability to Cobra.  
23 And it's generated between 40 and 80 million dollars in  
24 revenue each week since November.

25 These are not the indicia of an administratively

1 insolvent debtor, not even close. The objection should be  
2 overruled for that reason alone. And as the Court noted, the  
3 concept of administrative insolvency also just doesn't really  
4 apply here in Title III. Excuse me.

5           The concept of paying these claims in connection with  
6 a plan works hand-in-hand with Section 305, which doesn't  
7 allow for interference with a debtor's property unless it's in  
8 connection with a plan, or in the context of the Interim  
9 Compensation Order, which has these clear criteria, again, as  
10 the Court noted, and this isn't one of them.

11           So unless the Court has any questions --

12           THE COURT: No. Thank you.

13           Good morning, Mr. Barak.

14           MR. BARAK: Good morning, Your Honor. Ehud Barak  
15 from Proskauer Rose on behalf of the Oversight Board, as  
16 representative of the Title III debtors. Excuse me.

17           Your Honor, Cobra's objection is based on two false  
18 premises. The first one is that PREPA is administratively  
19 insolvent, and the second one, they argue that professionals  
20 are being treated better than other post-petition claimants.

21           I'll try not to repeat what Ms. McKeen and counsel  
22 for the Fee Examiner have said before me, but Cobra hasn't  
23 provided any evidence of administrative insolvency. The only  
24 thing Cobra relies on is an out-of-context quote in an  
25 unrelated pleading filed by the government parties --

1                   THE COURT: I'd ask that you just slow down a little  
2 bit. Thank you.

3                   MR. BARAK: Sorry. Of course.

4                   On the other hand, PREPA'S public filing and the  
5 declaration make it clear that PREPA is not administratively  
6 insolvent. PREPA contemplates paying all administrative  
7 claims in full, and in fact, the declarations state as much.

8                   If PREPA wasn't paying administrative claims, you  
9 would be having a mass of people here objecting or filing  
10 motions. This is not the case. There is a handful of claims  
11 like that that have been filed, and all are disputed and have  
12 issues with -- and that goes really to what Ms. McKeen said  
13 before me, that Cobra is not just a post-petition payment that  
14 asked to be paid for the work they've done, but there is a  
15 real reason for that.

16                   And the reason it's disputed for -- at least three  
17 reasons that, Your Honor, before you was stated, and I don't  
18 want to repeat that. Cobra's claim actually was paid 1.1  
19 billion dollars before it was disputed. So it was paid in the  
20 ordinary course until we found there was issues with that  
21 claim.

22                   As Ms. McKeen has noted, PREPA has 450 million cash  
23 on hand, and that's after repaying the 300 million dollars of  
24 debt that Your Honor previously approved earlier in the case.  
25 So PREPA is building cash in that respect.

1           It's -- I just want to turn to the quote that Cobra  
2       relied on. PREPA's need for outside funding to rebuild the  
3       power grid also does not show administrative insolvency. The  
4       electric system is currently running, even without federal  
5       funding. That's an important point.

6           We don't need the federal funding for day-to-day  
7       operations. We need the federal funding in order to require  
8       long-term authorization of the PREPA grid, and not for  
9       ordinary course. And that's an important issue for the  
10      administrative insolvency point.

11          Turning to the other erroneous assumption that Cobra  
12      relied on, that professional fees received -- that  
13      professionals received preferential treatment. Your Honor,  
14      the professionals in these cases are not being treated better  
15      than any other post-petition claimant.

16          It's important nondisputed, post-petition claimants  
17      are being paid in full in the ordinary course, full stop.  
18      While professionals, on the other hand, are paid subject to  
19      this, and sometimes to greater than 30 percent, and are  
20      subject to holdback.

21          Just for comparison, Your Honor, Cobra has already  
22      been paid over 90 percent of its first contract. And overall,  
23      as it was stated, it was paid 1.1 billion dollars out of a 1.3  
24      billion dollar claim, which is approximately 82 percent. The  
25      professional fees are subject to a review process for the

1 Court, for the Fee Examiner, who actually objected to Cobra's  
2 relief. And other parties in interest can raise objections as  
3 well.

4 The critically -- professional payments are only  
5 allowed a final basis and a final hearing at the end of the  
6 case. So if there is any issue with that, people can raise  
7 it. And Your Honor, under 316, has the discretion to allow  
8 the fees or not to allow the fees.

9 I think, given the circumstances, Cobra's argument  
10 that it has to wait while other professionals gets paid lacks  
11 any credibility, and Cobra's objection is no more than a  
12 litigation tactic to basically force PREPA to pay its claim.  
13 And the fee objection should not be the tool to be used.  
14 Cobra has filed its own motion to compel payment, and that's  
15 where its claim should be addressed, not in a fee objection to  
16 other professionals.

17 Which, by the way, Cobra didn't have an issue with  
18 any of -- the reasonableness of any of the professionals.  
19 It's just a blanket approach of just, objecting to everything  
20 until I get paid. This shouldn't be a tool.

21 Lastly, Your Honor, Cobra's request is not in the  
22 best interest of the Title III case. If professional payments  
23 are further held back or cut off as Cobra requests, some  
24 professional may be unable to continue. This may have a  
25 tremendous effect on the progress of the PREPA Title III case.



1                   Just one point to rebuttal, and it's important to  
2     note that the contract provides that if FEMA does not obligate  
3     funds because of Cobra's doing, PREPA does not have to pay.  
4     So the fact that there is a criminal case, and the fact that  
5     the people are pleading guilty or they're found to be guilty,  
6     if that is what's going to happen here, then it might have a  
7     real effect on Cobra's entitlement to get paid. And if their  
8     claim is obligated and if there are no issues, then they will  
9     get paid. And the Code provides and PROMESA provides under  
10    314(b) (4), we have to pay them.

11                  But the timing is not now. The timing is at  
12    confirmation. It's a confirmation requirement. So we are  
13    proceeding with the code, with the PROMESA, and there is no  
14    issue there.

15                  THE COURT: Thank you.

16                  MR. BARAK: Thank you.

17                  THE COURT: Any further remarks on Cobra? Because  
18    I'm ready.

19                  Mr. Baldini. It looks like he's coming back briefly.

20                  MR. BALDINI: Yes, Your Honor. Just very briefly, if  
21    I might. I appreciate that I'm in a bit of a box here because  
22    while the debtors spent a lot of time talking about the nature  
23    of the claims and the contracts, the matters are stayed. And  
24    they're telling you at the same time what they say and what  
25    they mean, but also, that I should not be permitted to

1 litigate the issues about what they say and what they mean.

2 But I will say for the record that we believe it's a  
3 legal fiction, that these amounts aren't due and payable, and  
4 that any impact of the reasons that they list for why the  
5 matter should be stayed is -- will not have an impact on  
6 whether Cobra is entitled to payments here or not.

7 The second thing I would say is a lot has been made  
8 about how much Cobra's been paid so far. That, to me, is  
9 irrelevant. A 250 million dollar claim is a meaningful claim,  
10 and we should focus on that as opposed to what was paid in  
11 advance. We all have businesses to run. That is a sizable  
12 claim. We are a sizable and important constituency in these  
13 proceedings.

14 That's it, Your Honor.

15 THE COURT: Thank you.

16 I have carefully considered all of the written  
17 submissions and everything that has been said here today, and  
18 I will now make my ruling with respect to the Omnibus  
19 Objection to Fee Applications filed by professionals and  
20 Request to Increase Holdback Amount filed by Cobra, which is  
21 docket entry number 9419 in the 3283 case, and the Supplement  
22 to Omnibus Objection to Fee Applications filed by  
23 professionals and Request to Increase Holdback Amount filed by  
24 Cobra at docket entry 9752 in the 3283 case. I will refer to  
25 those objections collectively as the Objection filed by Cobra

1 Acquisitions, LLC.

2 Cobra challenges a total of 20 interim fee  
3 applications, which I'll refer to collectively as the Interim  
4 Fee Applications, filed by professionals retained in  
5 connection with PREPA's Title III case, and further seeks an  
6 order suspending current payments to PREPA's administrative  
7 creditors, including professionals, until PREPA can  
8 demonstrate its administrative solvency, including its ability  
9 to pay Cobra's outstanding invoices.

10 In the alternative, Cobra requests an order  
11 significantly increasing the current holdback amounts under  
12 the Interim Compensation Order and requiring PREPA to  
13 demonstrate its administrative solvency before it disburses  
14 any holdback amounts following interim allowance.

15 As I said, the Court has considered carefully all of  
16 the submissions and arguments. For the reasons that I will  
17 now explain, the objection is overruled.

18 The proffered factual basis for Cobra's objection is  
19 an assertion in the Joint Urgent Motion of the Oversight  
20 Board, PREPA, and AAFAF to extend all application deadlines to  
21 Cobra Acquisition, LLC's Motion for Allowance and Payment of  
22 Administrative Expense Claims filed as docket entry 8838 in  
23 the 3283 case that, "PREPA relies upon FEMA funding to pay for  
24 the costs of power repairs and power restoration", and  
25 "Therefore, does not have immediate or clear access to the

1 funds necessary to pay Cobra's purported claims without taking  
2 those funds away from paying operating expenses."

3 Relying on decisions in Chapter 11 and Chapter 7  
4 cases involving administrative expense claims, Cobra contends  
5 that the government parties' statement regarding PREPA's  
6 reliance on FEMA funding somehow triggers an immediate  
7 requirement that PREPA establish its administrative solvency  
8 before it can remit further payments to professionals retained  
9 in connection with PREPA's Title III case.

10 PROMESA imposes no such obligation. Rather, as it  
11 pertains to administrative expense claims, PROMESA Section  
12 314(b)(4) requires only that, as a condition to confirmation,  
13 a plan must provide that on the effective date of the plan,  
14 each holder of an administrative expense claim, "Will receive  
15 on account of such claim, cash equal to the allowed amount of  
16 such claim," except to the extent that the holder of the claim  
17 has agreed otherwise.

18 PROMESA does not refer to or otherwise incorporate  
19 the concept of administrative insolvency, and there is no  
20 liquidation alternative available in a Title III case, as  
21 there is a Chapter 11 case. Nor is there a requirement or  
22 mechanism in PROMESA for measuring a Title III debtor's  
23 ability to pay administrative expenses through the pendency of  
24 its case prior to the plan confirmation stage.

25 PROMESA, likewise, does not restrict the debtor's

1 ability to make expenditures of its choosing along its journey  
2 to plan confirmation. Consequently, there is no legal basis  
3 for Cobra's demand that the Court restrain the ability of  
4 PREPA to pay its administrative expenses as they accrue and in  
5 a manner that PREPA deems appropriate.

6 Sections 303 and 305 of PROMESA limit the Court's  
7 ability to interfere with the property of a Title III debtor,  
8 such that PROMESA does not require the submission of payments  
9 to professional service providers for Court approval.

10 Nonetheless, under Section 316 of PROMESA and the interim  
11 compensation construct that was, upon the motion of the  
12 debtors, approved and adopted by this Court, the Court  
13 considers reasonableness and necessity in connection with  
14 interim fee applications, and at the final fee application  
15 phase, will make an ultimate determination regarding  
16 reasonableness and necessity.

17 Cobra has not challenged the interim fee applications  
18 on the grounds that the fees charged were unreasonable, or  
19 that the services rendered were not necessary. Evaluation by  
20 the Court of the debtor's ability to pay administrative  
21 expenses is neither a feature of the supervisory mechanism  
22 established by the Interim Compensation Order, nor a  
23 requirement of PROMESA Section 316.

24 Accordingly, there is no legal or factual basis for  
25 the relief sought by Cobra, and the objection is overruled in

1 its entirety. The Court will enter an order consistent with  
2 this decision.

3 And having rendered that decision, I now address the  
4 Fee Examiner's recommendations and approve the Fee Examiner's  
5 recommendations in their entirety. The Court will enter the  
6 proposed form of Omnibus order that has been submitted by the  
7 Fee Examiner with its report, which approves the interim fee  
8 applications listed on Exhibit A to the report; approves the  
9 final fee applications listed on Exhibit B to the report;  
10 defers consideration of the interim fee applications listed on  
11 Exhibit C to the report; and defers consideration of the final  
12 fee applications listed on Exhibit D to the report.

13 Thank you.

14 The next Agenda item is the mediation team's Amended  
15 Report. As you can see from the organization of the Agenda,  
16 my intention is to address the overall construct and logistics  
17 as proposed by the mediation team, and then hear any further  
18 argumentation on the related motions after that and rule  
19 fairly comprehensively after hearing everyone, insofar as they  
20 want and need to be heard.

21 We will begin this and go until noon, break until  
22 1:00 for lunch, and then come back.

23 Judge Houser, did you want to make some opening  
24 remarks?

25 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

1 HOUSER: I do, please.

2 THE COURT: And thank you for your work, and thank  
3 you for being here today.

4 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

5 HOUSER: You're welcome.

6 As the Court knows from your own experience in these  
7 Title III cases, every relevant issue raised by every party,  
8 unless settled or otherwise rendered moot, will need to be  
9 addressed and resolved at some point in the confirmation  
10 process, or post confirmation.

11 The question the mediation team had to address in its  
12 Amended Report, and this Court will have to address as it sets  
13 the schedule for moving forward in these cases, is the  
14 relative priority of when and how the complex matters and  
15 issues are phased for resolution. In developing our  
16 recommendations for the process for resolving the many  
17 contested matters and adversary proceedings, we have acted as  
18 neutrals, bearing in mind the preservation of resources and  
19 the process that is due every party.

20 Phasing litigation involves judgment calls and  
21 tradeoffs, so it is to be expected that our recommendations,  
22 as set forth in our Amended Report, have generated comment and  
23 disagreement. Every attorney appearing here today has a  
24 responsibility to push and argue for the interests of their  
25 client, but only their client. And, of course, to each of

1 those clients, its issues are the most important issues and  
2 must be heard early in the anticipated process.

3           The mediation team simply tried to weigh those  
4 competing and conflicting interests and propose a process to  
5 resolve the most important issues that will likely have the  
6 biggest impact on moving these cases forward in a meaningful  
7 way, given everything we know about the issues in the cases;  
8 and equally importantly, in a way that we hope will facilitate  
9 the building of more consensus as we move forward in these  
10 cases towards confirmation. But ultimately, Judge Swain, the  
11 decision on how to manage these cases falls to you, and to you  
12 alone.

13           To set the stage for my further comments, I'd like to  
14 remind everyone why you made the decision to appoint a  
15 mediation team and what the mediation team's role was directed  
16 by you to be in these cases. Under your original Order, the  
17 mediation team was appointed "To facilitate confidential  
18 settlement negotiations of any and all issues and proceedings  
19 arising in the Title III cases and proceedings;" and "To  
20 further the goal of the successful consensual resolution of  
21 the issues raised in the Title III debt adjustment  
22 proceedings."

23           That original charge was fairly broad, but it was  
24 then broadened by this Court's July 2019 Stay Order, in which  
25 this Court directed the mediation team to attempt to bring



1 order to the litigation chaos that was before it, via agreed  
2 scheduling orders if possible, or, absent that, a report  
3 addressing the various pending contested matters and adversary  
4 proceedings then subject to your stay, and a schedule for a  
5 plan and disclosure statement process.

6 In particular, the Stay Order described the  
7 "Procedural matters" to be addressed as the "Relative priority  
8 of issues to be addressed by the Court, the appropriate  
9 process through which issues should be addressed by the Court,  
10 and the recommended timing of the Court's consideration of  
11 those issues."

12 The mediation team understood what it was being asked  
13 to do and took seriously your direction. It also took  
14 seriously the Court's initial direction that we attempt to  
15 facilitate confidential substantive settlement negotiations.  
16 The mediation team worked continuously through the fall and  
17 winter, and the last few months, on the parallel substantive  
18 and procedural paths that you directed. This is all detailed  
19 in our Amended Report, and I don't feel the need to repeat or  
20 reiterate that here.

21 While some parties may take issue with the structure  
22 of the substantive mediation that led to the Plan Support  
23 Agreement as amended, and I understand their frustration over  
24 being excluded from that process, the mediation process is not  
25 currently before the Court today. But with that said, I will

1 make two observations about the mediation process.

2           The fact that decisions had to be made as to who  
3 would participate in substantive mediation was addressed by  
4 you in your Stay Order when you directed that parties  
5 "Identified by the mediation team leader" would participate in  
6 "Any mediation session scheduled by the mediation team  
7 leader."

8           I simply did what you Ordered. I identified the  
9 parties who would participate in substantive mediation in  
10 order to attempt to achieve some consensus in these cases and  
11 to begin to build towards a less contentious confirmation  
12 hearing.

13           And importantly, the mediation process was successful  
14 in achieving an agreement supported now, as Mr. Rosen  
15 indicated earlier this morning, by the holders of in excess of  
16 10.5 billion dollars of GO-PBA claims. A substantial increase  
17 from the amount of support for the September 2019 plan, which  
18 was negotiated without mediation team involvement.

19           But turning away from the mediation process and to  
20 what is before the Court today, are our scheduling  
21 recommendations going forward. And while those  
22 recommendations are informed by the Plan Support Agreement,  
23 and now the Amended Plan and Disclosure Statement have been  
24 filed, those documents have been signed and filed, so further  
25 discussion of the process that led to them is not terribly

1 relevant to the scheduling issues before you, nor does it seem  
2 especially appropriate to me to debate the merits of the  
3 Amended Plan Support Agreement, or whether the Plan, as  
4 amended, that embodies it, is confirmable.

5           As the Court can tell from the objections you have  
6 been studying, the parties have widely differing views on  
7 those questions, but the Amended Report does not opine on the  
8 confirmability of the Amended Plan, and those questions are  
9 not before the Court today. There will be plenty of  
10 opportunity, as we move forward in the adjudicative process,  
11 for the parties to be heard on the merits, or, as some would  
12 say, the demerits of the Amended Plan.

13           The focus today is, as it should be, on the schedule  
14 for the coming months, and what to do with the myriad of  
15 contested matters and adversary proceedings that are pending  
16 before the Court, all of which is addressed at length and in  
17 detail in the mediation team's Amended Report.

18           One final preliminary observation that seems fairly  
19 obvious, but perhaps bears highlighting. The corollary to the  
20 mediation team's role as a neutral in these cases is the  
21 Oversight Board's role as the party in interest and the only  
22 party to which Congress granted the right to propose a Plan of  
23 Adjustment in these Title III cases.

24           In the end, it was the Oversight Board who chose to  
25 enter into the amended PSA on the terms contained in that

1 agreement and to file and pursue confirmation of the Amended  
2 Plan. The mediation team simply facilitated the related  
3 negotiations.

4           Against this background, the mediation team's  
5 recommendations as set forth in its Amended Report were driven  
6 by several factors, including, first, a desire to minimize the  
7 burden of these cases on the Court in a way that is fair to  
8 all of the parties; second, to ensure resources of both the  
9 parties and the Court are not unnecessarily expended; third,  
10 to foster consensus among the parties to the extent possible;  
11 fourth, establish a process through which this Court can  
12 determine whether Plans of Adjustment for the Commonwealth,  
13 PBA and ERS are confirmable; fifth, ensure the process to  
14 consider confirmation of those plans complies with applicable  
15 law and is fair and appropriate under the circumstances of  
16 these cases; and sixth, the age of the cases and the effect of  
17 the continuation of the cases on all parties, including the  
18 people of Puerto Rico.

19           After considering those factors and everything that  
20 the mediation team knows about these cases and the issues  
21 raised in them, the mediation team has come to some  
22 conclusions. First, the only way to develop consensus here is  
23 through incremental steps. It goes without saying that these  
24 cases are extraordinarily complex.

25           There are many, many parties involved in the cases

1 generally and in the mediation process specifically. The  
2 parties' views and economic interests are extremely diverse.  
3 You have many debtholders or insurers across the capital  
4 structure.

5 And, for example, a GO deal might not be acceptable  
6 to certain parties unless and until they understand what they  
7 might recover at, for example, the Highway Transportation  
8 Authority, or another instrumentality of the Commonwealth of  
9 Puerto Rico, because of those cross-holdings that do cut  
10 across the capital structure.

11 Given these complexities, among many, many others, I  
12 do not believe that there is a way to get everyone in a big  
13 room simultaneously to cut a global deal on a fully consensual  
14 plan. It is simply not possible. To quote a member of the  
15 mediation team, "We are mediators, not magicians."

16 So the only other alternative is to try and build as  
17 much consensus as possible on an issue-by-issue basis before  
18 starting down a path to a confirmation hearing, which is the  
19 approach that the mediation team undertook in the fall and  
20 winter of 2019, and which led to the execution of the amended  
21 PSA and the filing by the Oversight Board of the Amended Plan  
22 and Disclosure Statement in late February of 2020.

23 Importantly, the amended PSA is only the first step in what  
24 the mediation team believes must be a multifaceted process.

25 So where are we today? As the objections make clear,

1 | there are at least four significant groups of parties in  
2 | interest that remain to be addressed: AAFAF, and the  
3 | Government of Puerto Rico, the so-called clawback creditors,  
4 | the ERS creditors, and the Unsecured Creditors Committee. And  
5 | obviously, not to overlook them, there are some GO-PBA  
6 | creditors who are not yet satisfied with the proposed global  
7 | settlement set forth in the Amended Plan. If the Court adopts  
8 | the mediation team's recommendation to stay the GO-PBA related  
9 | litigation, the confirmation hearing will determine whether  
10 | those parties become bound to the settlement if the Amended  
11 | Plan is confirmed.

12 |           Regarding the other four significant groups that  
13 | remain in the mediation team's mind to be addressed, I'd like  
14 | to make the following observations. First, conversations are  
15 | ongoing among the Oversight Board and the Government of Puerto  
16 | Rico that, at least I hope, will prove successful in resolving  
17 | the government's current disputes with respect to the Amended  
18 | Plan. Obviously time will tell with respect to those  
19 | conversations.

20 |           Second, with respect to the ERS creditors, it is my  
21 | hope that a further agreed scheduling order will be presented  
22 | to you relatively soon by the government parties and the  
23 | committees on the one hand, and the ERS bondholders and fiscal  
24 | agent on the other hand, to address certain legal issues and  
25 | disputes among those parties, which should facilitate

1 consideration of confirmation of the Amended Plan.

2 I hope that agreed scheduling order can be presented  
3 to you in the next ten days or so, and it is my view that  
4 until you weigh in and provide the parties with your views  
5 regarding the merits of the party's respective legal  
6 positions, I believe it will be difficult to make progress in  
7 mediation. Or, as stated another way, rulings from this Court  
8 on certain critical issues, including asserted administrative  
9 claims by the ERS bondholders against the Commonwealth, will  
10 assist the parties in the mediation process.

11 Turning next to the Unsecured Creditors Committee.  
12 Mr. Despins has filed various pleadings in which he raises  
13 certain concerns over the confirmability of the Amended Plan  
14 as it relates in particular to the treatment of his  
15 constituents. Obviously, those issues will have to be  
16 addressed at some point in the confirmation process. The  
17 question is when.

18 In the view of the mediation team, you will have to  
19 make the final decision on how to prioritize your precious  
20 time, given the many, many issues that will be and have been  
21 raised; but at least the judgment of the mediation team is  
22 that the issues that the Unsecured Creditors Committee are  
23 raising can be addressed later in the confirmation process  
24 than he prefers.

25 That leaves the so-called clawback claims and the

1 relative rights of those parties against the Commonwealth.  
2 These issues are significant, and the parties' opposite views  
3 on them make it exceedingly difficult to attempt to settle  
4 them through mediation without some guidance from this Court.  
5 And that is why we believe these issues deserve the Court's  
6 immediate attention on the schedule largely recommended in the  
7 Amended Report. I'll come back to that report at the end of  
8 my remarks.

9           As you know from the Amended Report, the mediation  
10 team has selected key issues on which the parties disagree and  
11 on which we believe rulings from you will be of assistance to  
12 the parties and to the mediation team. It remains my view  
13 that until this Court weighs in and provides the parties with  
14 its views regarding the merits of their respective legal  
15 positions, it will be difficult to make progress in  
16 substantive mediation.

17           So how do we move forward? As I've just stated, it  
18 will be difficult to achieve complete consensus on a plan of  
19 adjustment for the Commonwealth, PBA and ERS. There are  
20 simply too many competing views and disparate interests. But  
21 the best way to build as much consensus as possible is to  
22 begin to move forward toward what will now be a contested  
23 confirmation process. Rulings along the way to confirmation  
24 should be a, my word, reality check for the parties, and  
25 should facilitate the mediation team's continuing work to



1 attempt to build more support for confirmation of a plan of  
2 adjustment before we actually get to that formal confirmation  
3 hearing.

4           Delaying the confirmation process further is not  
5 helpful in the opinion of the mediation team. Parties are not  
6 entitled to confirmation of a consensual plan, as much as I  
7 would like that, and I'm sure this Court would like that, too.  
8 Nor are creditor parties entitled to hold up the confirmation  
9 process indefinitely to pursue litigation in the Title III  
10 court or elsewhere.

11           But what those parties are entitled to is a fair  
12 process through which any objections they have to confirmation  
13 of a plan of adjustment are fully and fairly heard by this  
14 Court. It is simply premature today to know if the schedule  
15 proposed by the Oversight Board will provide that full and  
16 fair opportunity to be heard.

17           What can be said today is that the time line  
18 suggested by the Oversight Board satisfies the legal  
19 requirements for confirmation. But instead of delaying  
20 today, because the process being suggested might not build in  
21 sufficient time, the mediation team suggests that we start  
22 down the confirmation path on a specific schedule, with the  
23 understanding that if this Court is convinced along the way  
24 that parties are not getting that full and fair opportunity  
25 to be heard, you'll adjust the schedule as the process moves

1 forward. In short, if we don't start, we can never finish.

2 To be clear, the mediation team is not an advocate  
3 for confirmation of the Amended Plan. We have been and remain  
4 neutral. However, as neutrals, and after carefully reviewing  
5 all of the issues raised by all of the parties in their  
6 responses and objections, the mediation team remains convinced  
7 that all parties and the cases are best served by moving  
8 forward in a manner consistent with the recommendations set  
9 forth in our Amended Report, with one exception due to changed  
10 circumstances that have occurred since the filing of our  
11 Amended Report.

12 I will admit that I have not had the opportunity to  
13 discuss this suggestion with the parties, but will propose it  
14 now because it seems that this is the appropriate time to  
15 propose it, so that you can ask questions about it and,  
16 similarly, they can ask questions about it and raise concerns  
17 over it, if they have any.

18 So let me turn to the revenue bond Scheduling Order  
19 that was attached to our proposed Amended Report. And at  
20 least in my proposed redline version of that Order, Your  
21 Honor, this is on page seven-ish, which is the summary  
22 judgment motion practice section of that proposed schedule --  
23 I'm going to pause to let the Court get there and other  
24 parties to get there as well.

25 THE COURT: So this starts with the bullet that says,

1 "Limited summary judgment motion practice?"

2 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

3 HOUSER: Yes.

4 THE COURT: I'm there.

5 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

6 HOUSER: So the earlier sections leading to that provided for  
7 the opportunity to answer, move to dismiss, file cross-claims,  
8 et cetera.

9 On February 27, consistent with this proposed  
10 schedule, the defendants filed motions to dismiss. It is my  
11 understanding that no one answered or filed a cross-claim or  
12 counterclaim. They simply filed motions to dismiss. And  
13 what's prompting the mediation team to consider adjustments to  
14 the schedule is the fact that at the time we filed the Amended  
15 Report, we believed there would be a lift stay hearing  
16 slightly earlier, tomorrow, than it proves that it will  
17 ultimately be.

18 The schedule has shifted. Rather than have a  
19 preliminary lift stay hearing tomorrow, that preliminary lift  
20 stay hearing is now April 2nd. So some of our other  
21 recommendations actually proceeded off of an assumption that  
22 we would have a March 5th preliminary lift stay hearing, which  
23 was the then thinking on it.

24 And so the dates -- a question that easily arises is  
25 what should we do now that we know that April 2nd is the

1 preliminary lift stay hearing, not March 5th? And the answer  
2 to that is there is no perfect solution. But let me tell you  
3 what my suggestion to the Court is. I stay with my premise in  
4 the Amended Report that a disclosure statement hearing should  
5 occur on June 3rd.

6 I remain convinced that the clawback issues that have  
7 been identified in the Amended Report are best ruled on, if  
8 possible, prior to the Disclosure Statement hearing. That  
9 gives us a compressed time frame in which to work.

10 We have April 2nd to June 3rd, assuming that the June  
11 3rd date is the date this Court ultimately determines is  
12 appropriate for a disclosure statement hearing. And the  
13 reason why, as I've said in the Amended Report, it is  
14 significant to address these issues prior to approval of a  
15 disclosure statement, and ultimately solicitation on a plan  
16 and disclosure statement, is because some of the clawback  
17 issues could be significant impediments going forward, if the  
18 Oversight Board's view of those issues is incorrect, and the  
19 bondholders or those clawback creditors' view is determined to  
20 be correct.

21 So knowing the answer to that question before we  
22 proceed down a solicitation path would be, in my view,  
23 exceedingly helpful to the process. So in an imperfect world  
24 of trying to move forward with these cases in as prompt a  
25 fashion as possible, my suggestion is as follows. You can't

1 make the parties withdraw their motions to dismiss, but it is  
2 also true that rulings on motions to dismiss are not often  
3 terribly substantive. And, therefore, we suggest you collapse  
4 the schedule and have the motions to dismiss and the summary  
5 judgment schedule be concurrent.

6           The motions to dismiss are on file. And what we  
7 suggest is that they can be heard simultaneously, and that the  
8 schedule be modified as follows. We had cross-motions for  
9 summary judgment to be filed on March 16th in our original  
10 proposed schedule. We would suggest moving that to March  
11 27th.

12           It's not perfect. We won't know how you are looking  
13 at the preliminary lift stay issues, but the parties can file  
14 motions for summary judgment in advance of that ruling.

15           It's not life-threatening. They can assume whatever  
16 they want to assume and file the motions for summary judgment  
17 on the counts that we have suggested without knowing your  
18 thinking on the preliminary lift stay issues.

19           Secondly, responses to cross-motions for summary  
20 judgment would be filed April 24th, instead of April 14th.  
21 Replies on May 15th, instead of May 4th. And then a hearing  
22 on the motions for summary judgment and motions to dismiss, we  
23 would suggest be scheduled thereafter, but in May, presumably  
24 at a special setting that the Court would have to allow  
25 because of the June 3rd Disclosure Statement hearing.

1           With respect to the conflict-related motions, that  
2     schedule likely needs adjustment in light of the delay with  
3     the preliminary lift stay hearing. And the suggestion that we  
4     make with respect to that is that the deadline for filing any  
5     conflict motions be the later of 15 days after your ruling in  
6     connection with the preliminary lift stay hearings, and the  
7     later of your ruling, 15 days following your ruling, and the  
8     First Circuit's decision in the 926 appeal, which was argued  
9     before the First Circuit in Boston yesterday.

10           And then the deadlines still flow, because they were  
11    keyed off of that. So objections to the conflicts motion, 14  
12    days. Replies, seven days following the deadline. And then a  
13    hearing held on the conflicts motion. Our suggestion is that  
14    we put that at the Disclosure Statement hearing on June 3rd.

15           With those exceptions, we have studied all of the  
16    objections and responses that have been filed to our Amended  
17    Report. We believe that otherwise, the Amended Report  
18    recommendations remain sound, and we look forward to answering  
19    any questions that you might have.

20           THE COURT: Thank you, Judge Houser. Thank you very  
21    much. I suspect I will want to hold my questions for you.

22           I take it that from what you've just said on summary  
23    judgment scheduling and collapsing it with motions to dismiss,  
24    you think it is worth the layering of continued attention to  
25    the motions to dismiss, along with the summary judgment motion

1 practice, and the conflict motion practice, rather than, for  
2 instance, staying the motion to dismiss to facilitate focus on  
3 the other two?

4 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE  
5 HOUSER: I am perfectly fine with you staying the motion to  
6 dismiss practice. I did -- I do not find that likely to be  
7 terribly helpful or insightful.

8 But anticipating that those who wanted to file  
9 motions to dismiss may be opposed to that, I am okay with them  
10 being collapsed, if you believe it appropriate. But I would  
11 be very satisfied with the motions to dismiss being stayed and  
12 proceeding to the targeted summary judgment practice that we  
13 recommended initially. I think either can work, and it's  
14 ultimately the Court's decision.

15 THE COURT: And may I also assume that if the parties  
16 were amenable to a later summary judgment cross-motion filing  
17 date that would be shortly after the lift stay argument date  
18 to facilitate whatever tea leaf reading might be associated  
19 with that, with the assumption of advanced preparation of a  
20 buffet menu of arguments and a shortened response time in  
21 order to keep to the reply and argument schedule that you've  
22 suggested, if the parties were amenable to that, you wouldn't  
23 have any major structural objection to that?

24 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE  
25 HOUSER: Absolutely not.

1 THE COURT: Thank you. I believe that is it for me  
2 for now. Thank you so much, Judge Houser.

3 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE  
4 HOUSER: Of course, Your Honor.

5 THE COURT: So we have 23 minutes to use well before  
6 the lunch break. Who is up next?

7 Good morning.

8 MR. FIRESTEIN: Good morning, Your Honor. Michael  
9 Firestein of Proskauer on behalf of the Oversight Board.

10 I have two process questions. One, I stepped up to  
11 the mic because other than Mr. Despina, I'm the closest to the  
12 microphone, but I don't think that the parties had laid out  
13 for themselves in what order you were hoping or expecting that  
14 the speakers would come up.

15 We're happy to do it in any order that the Court  
16 prefers. We had thought that Judge Houser would be the first  
17 to speak. It turned out that way. If you're looking for  
18 those who are more proponents of the mediation report to speak  
19 first or second, we're happy to do that.

20 THE COURT: My idea was proponents and then  
21 opponents, but do you have another --

22 MR. FIRESTEIN: Yes. The second issue, Your Honor,  
23 is in order to fully address what Judge Houser has said, and  
24 she correctly pointed out that her news this morning from the  
25 podium is news to all of us in terms of the scheduling, I



1 would at least like the opportunity to discuss with my  
2 colleagues our view, because as you might imagine, there are a  
3 number of team members who are involved in all of these  
4 various motion practices. And before I assert what our  
5 position is, even though I know what I think in my own head,  
6 I'd like to make sure that what I think is consistent with  
7 what some of my colleagues think as well.

8 My bet is that most of the other people here are  
9 going to have that opportunity over the lunch. I don't know  
10 that it's going to take me all that long to do it. I'm happy  
11 to speak first. I'm happy to do whatever the Court wishes to  
12 do under the circumstances. I think our positions are rather  
13 set forth in writing already.

14 THE COURT: Well, why don't we do this. Let's take a  
15 hard ten-minute break until ten to 12:00, and then plan to  
16 start the lunch break at 12:15, which I think lets people get  
17 to the cafeteria. And the lunch break would be 12:15 to 1:15.  
18 And then I could hear 25 minutes of remarks before we break.  
19 Does that make sense?

20 MR. FIRESTEIN: It's completely fine. I think, Your  
21 Honor, you will find that our remarks -- and when I say "our,"  
22 I mean on behalf of the Board, and I'm splitting some time  
23 with Mr. Rosen on some of these collective issues -- will  
24 probably not be complete, or they might well be complete by  
25 12:15, plus or minus, you know, within five minutes of it, one

1 way or the other. But we'll accede to the Court's wishes,  
2 whichever which way you want.

3 THE COURT: Well, I had you down for 40 minutes. If  
4 you tell me at 12:15 that if I give you another five minutes  
5 or ten minutes, you're done and reserving everything else for  
6 rebuttal, I'm open to hearing that.

7 MR. FIRESTEIN: I think that's the way it's going to  
8 go. I think we'll reserve some time. And, I mean, we haven't  
9 clocked it, but my guess is we're probably going to talk for  
10 20 minutes or so, subject to whatever --

11 THE COURT: Okay. So let's stop talking now and  
12 start talking again in ten minutes at ten to 12:00 by that  
13 clock. Thank you. See you all shortly.

14 MR. FIRESTEIN: Okay.

15 (At 11:39 AM, recess taken.)

16 (At 11:53 AM, proceedings reconvened.)

17 THE COURT: Mr. Firestein.

18 MR. FIRESTEIN: Good morning, Your Honor. Still  
19 morning.

20 THE COURT: Still morning.

21 MR. FIRESTEIN: Michael Firestein of Proskauer Rose  
22 on behalf of the Board. This will be brief.

23 We have had an opportunity to consider both the  
24 Court's observations and Judge Houser's remarks, including the  
25 proposed revisions that she had suggested to the Revenue Bond

1 Order. We continue to support the schedule, even as modified  
2 by Judge Houser's proposal.

3 We further are agreeable to the notion of staying the  
4 motions to dismiss for the reasons that were articulated by  
5 Judge Houser, in the hopes that on or near the date of the  
6 preliminary hearing that ultimately occurs, some guidance will  
7 be forthcoming from the Court, we hope. I think all parties  
8 are hopeful for that, relative to some of the key issues  
9 and --

10 THE COURT: It's certainly my intention to rule on  
11 matters as promptly as I can, consistent with thinking about  
12 them appropriately.

13 MR. FIRESTEIN: I'm sure there was never a doubt on  
14 anyone's part in the gallery here today.

15 And other than that, I think that our interests and  
16 the Court's interests would be best served by simply reserving  
17 our time to hear what the other parties say in response to  
18 this, since we originally had submitted our support of the --  
19 of the Amended Report and the schedule that was proposed.

20 We've now articulated that we are amenable to the  
21 edits that Judge Houser has indicated, including, more  
22 specifically, the stay of the Rule 12 motions, but however  
23 that shakes out, it shakes out. And I think Mr. Rosen wanted  
24 to make just a couple of observations, and then we'll reserve  
25 the balance.

1           THE COURT: Before you go, and it may be that this is  
2 something that you want to defer to Mr. Rosen, and I almost  
3 hesitate to do this, because I don't want to get too weedy  
4 here, but I need something clarified for me.

5           MR. FIRESTEIN: Of course.

6           THE COURT: Which is that I read Mr. Despins to be  
7 arguing strenuously that there are overlapping priority and  
8 preemption argument issues that would come up in the revenue  
9 bond litigation as it's proposed to go forward. That would  
10 also implicate GO bonds and, therefore, the stays and all that  
11 follow. But it also seemed to me that the specific  
12 recommendations about topics for the early summary judgment  
13 motion practice might have been crafted to cut out or avoid at  
14 least some of those issues.

15           So if you can give me some quick reaction as to  
16 whether there really is an overlap, in your view, that I need  
17 to take into account in considering the proposed complete stay  
18 of GO bond issues, I would be grateful.

19           MR. FIRESTEIN: Well, clearly the preemption issue is  
20 present on both sides of the equation. I don't believe that  
21 the matters are identical. People come from different  
22 positions relative to that, at least on the GO side. There  
23 are, you know, direct obligations of the Commonwealth, as  
24 distinguished from whatever else is going on. But  
25 nonetheless, I can't reject the notion that preemption is

1 relevant, however, and clearly that is going to be addressed  
2 in the context of the revenue bond motions.

3 But the fact remains that, like many cases, say, for  
4 example, in the case of a joint tortfeasor where someone  
5 settles a case because they're able to reach consensus or  
6 agreement with respect to a particular set of issues, and I  
7 don't mean to equate a Title III case under PROMESA with a  
8 joint tortfeasor case, but, you know, parties do have the  
9 opportunity to resolve their matters based upon what they  
10 think is in their best interest at the time.

11 And I don't think that by pulling on that string,  
12 that Mr. Despina can attempt to unravel all the effort that  
13 was undertaken to build together the consensus and this  
14 massively comprehensive deal that has now struck a harmonious  
15 note with 10.8 billion dollars worth of GO-PBA claims.

16 So not withstanding the existence of potential  
17 overlap of issues, I don't think that that should stand in the  
18 way of parties who are prepared to resolve their matters from  
19 having the opportunity to do so, and I think we need to sort  
20 of see how things progress.

21 Maybe there will be other events that unfold in the  
22 coming weeks, but today is not that day to decide whether  
23 those are, in fact, exactly the same or not exactly the same,  
24 for the same reason that Judge Houser articulated that today  
25 is not the day to prejudge whether the PSA is appropriate or

1 the Plan is confirmable.

2 I think that the briefing that is going to need to be  
3 filed with respect to some of those issues might shed light,  
4 and the Court invariably reserves the right at another time to  
5 visit matters that are pertinent to the issue of Plan  
6 confirmation. But as I sit here or stand here right now, I do  
7 not see that as an impediment to going forward with the  
8 current schedule and the current motion schedule that is set  
9 forth between the parties who are really in quite vigorous  
10 disagreement over the substance of a whole host of issues, of  
11 which preemption is simply one.

12 THE COURT: Thank you. And does that same thing go  
13 for whether there are priorities under PROMESA?

14 MR. FIRESTEIN: Yes, Your Honor.

15 THE COURT: Thank you.

16 MR. ROSEN: Thank you, Your Honor. Brian Rosen from  
17 Proskauer on behalf of the Oversight Board.

18 Your Honor, like Mr. Firestein, we absolutely concur  
19 with what was said by the mediation team leader, but I rise  
20 because there were a few other items, perhaps later in the  
21 agenda, and you wanted to deal with them later, like the  
22 presolicitation motion. We view those as sort of all bound  
23 up.

24 So I just wanted to address that very quickly for the  
25 Court, if you don't mind.

1 THE COURT: That's fine.

2 MR. ROSEN: Your Honor, we filed this  
3 Presolicitation Motion with respect to ERS. And maybe it was  
4 the wrong title for the pleading itself, because it's really  
5 our effort to get more information concerning what claims  
6 might exist at ERS and to be able to properly reach out to all  
7 of these people who might have asserted these claims now or in  
8 the future.

9 And we gave in our papers, Your Honor, different  
10 scenarios as to who these people might be. They work there.  
11 They currently work there. They now work somewhere else. But  
12 the problem is that ERS doesn't have all of that information.  
13 So we merely tried to ask the Court for approval of a process  
14 to reach out to these people and to get that information so  
15 that we could, in the context of soliciting acceptances or  
16 rejections to the Plan of Adjustment, be able to touch base  
17 with all of these appropriate people and, in fact, understand  
18 what their claims might be.

19 It's not really an effort to expand or have a new bar  
20 date, Your Honor. It's really to find out who they are. So,  
21 Your Honor, we proposed a scenario within the motion itself,  
22 and we really received, I would say, two responses from the  
23 two committees, the Retiree Committee and the Unsecured  
24 Committee. There were other pleadings filed, just reservation  
25 of rights, Your Honor, but these two people, these two groups,

1 did have a suggestion.

2 One was to expand the period in which our reach-out  
3 would occur. And so what we did is we made earlier the period  
4 in which we could actually go out and solicit or send notices  
5 out, and we extended the period one week on the back end,  
6 creating a two week greater period.

7 There was also a request, Your Honor, that we have  
8 physical locations available on island so people could  
9 actually walk in and hand in these one-page pieces of paper,  
10 or they could do it online, Your Honor. We tried to offer  
11 both scenarios. We included both of those, Your Honor, in a  
12 filing that we submitted to the Court at the same time that we  
13 filed a response to the various objections with respect to  
14 setting the Disclosure Statement hearing. We did an Omnibus  
15 reply.

16 We hope, Your Honor, that that subsequent Notice of  
17 Presentment is sufficient to address these concerns. We know  
18 that it is with respect to the Retiree Committee. And they  
19 have said that they have no further issues with respect to the  
20 request. The Unsecured Committee, although we did address  
21 their concerns, they did indicate that they were not prepared  
22 to withdraw their objection, however, to that.

23 So Your Honor, with that, we would ask the Court to  
24 approve the process, the schedule that is laid out by the  
25 mediation team leader.



1           THE COURT: So I have a couple of concerns from the  
2 Court's perspective, and one is -- they're related, but  
3 basically it has to do with foot traffic. As we read the  
4 motion, it seemed to identify a universe that's potentially  
5 hundreds of thousands of people, some of whom you have  
6 information about, some of whom you don't, but you're  
7 proposing to kind of notify the world that within this group  
8 of 400,000 people, there are some people you know something  
9 about and some people you don't.

10           MR. ROSEN: Correct.

11           THE COURT: And given the response on the Bar Date  
12 Order and some other things, and what seems to be kind of  
13 local practice of wanting to make sure, conceivably at the  
14 physical locations, you could have hundreds of thousands of  
15 people showing up to say, do you know enough about me; let me  
16 tell you something more about me.

17           MR. ROSEN: Right.

18           THE COURT: So for any location, that could be  
19 overwhelming. If it's the courthouse, we get ground to a  
20 halt. So one question is whether there is some mechanism,  
21 some online registry, some phone number, something that people  
22 could call to find out whether they're a person you have  
23 questions about, or whether they're okay, to perhaps filter  
24 down some things.

25           And, in any event, to the extent you are proposing to

1 have people come to courthouses, any approval of this motion  
2 -- my approval in principle of the motion, if I grant it, will  
3 be subject to your being able to work out with the Court  
4 Clerk's Office whether we have the ability to host it. And if  
5 we tell you not, it's going to be not.

6 MR. ROSEN: Your Honor, in the proposed Order, we  
7 have five locations. Two of those are -- well, one of those  
8 is here, and the other is the Toledo Federal Building and U.S.  
9 Courthouse as well, the clerk's office in both of those  
10 places. If we cannot --

11 THE COURT: But isn't that --

12 MR. ROSEN: Well, there are two -- no. One is here.

13 THE COURT: Old San Juan and here, or Ponce and here?

14 MR. ROSEN: This is -- they're both San Juan  
15 addresses.

16 THE COURT: This is Federico Degetau --

17 MR. ROSEN: Right. And then there's the Jose Toledo  
18 Federal Building and U.S. Courthouse.

19 COURTROOM DEPUTY: That's Old San Juan.

20 THE COURT: That's Old San Juan. Okay.

21 MR. ROSEN: Yes. Yes. We do have -- we have  
22 arranged, Your Honor, at the other locations, the other three  
23 -- certainly for Prime Clerk people, we can embed the Prime  
24 Clerk people here as well. And if the Court, the Clerk would  
25 permit, to have a separate place so that they, in fact, do not

1 even, you know, get involved and get -- impact the Clerk's  
2 Office.

3 I don't know if that's doable, but --

4 THE COURT: Apparently the space that we provided for  
5 that for the claims --

6 MR. ROSEN: Was insufficient?

7 THE COURT: Well, it's now been repurposed. So --

8 MR. ROSEN: Oh.

9 THE COURT: --- that's why we shouldn't take it up  
10 today, because there's so much. We shouldn't take up today  
11 with logistical problems; but I'm putting you on notice that  
12 there are potentially significant logistical problems, and  
13 you'll need to talk to my operational friends here.

14 MR. ROSEN: That's fine, Your Honor. If necessary,  
15 what we'll do is we'll find additional or alternative  
16 locations within San Juan itself so that it doesn't even  
17 impact the court at all. We'll work that out.

18 THE COURT: It's very much appreciated.

19 MR. ROSEN: Absolutely.

20 With respect to the online, I will inquire as to  
21 whether or not that's doable. I think one of the problems is  
22 that ERS, because of the hurricanes that actually hit, they  
23 don't -- they lost a lot of their materials. And it's  
24 difficult to answer the question of "do you have information  
25 on me," because they may not; and, therefore, someone can't

1 answer the question at all.

2 So we can try to do our best. We can try and have a  
3 hotline available. We can speak with the -- not only the  
4 people at ERS, but the people also that have been assisting us  
5 at A&M, and AAFAF, et cetera, to see what the best logistic  
6 is. And we can certainly inform the Court as to what that is.

7 THE COURT: I'd be grateful. We just remember the  
8 lines and lines of people wrapping around the block in the hot  
9 sun, and you don't want to do that to them or us if there's a  
10 way to avoid that.

11 MR. ROSEN: Absolutely, Your Honor. Any other  
12 questions?

13 THE COURT: No. That's it. Thank you.

14 MR. ROSEN: Thank you. I think that's all from our  
15 standpoint with respect to the Amended Report, Your Honor.

16 THE COURT: Thank you.

17 So it's now almost ten after 12:00. Mr. Despins, do  
18 you want to speak now or after lunch?

19 MR. DESPINS: I'm just going to take ten seconds.

20 THE COURT: Mr. Despins.

21 MR. DESPINS: For the record, Luc Despins with Paul  
22 Hastings for the Committee.

23 Mr. Rosen is right that they resolved the lockbox  
24 issue. The other issue that's open is how long do they have  
25 to submit those. And the bid and the ask right now, they're

1 offering May 7th. We said May 31st.

2 And the reason for that is just that the people of  
3 Puerto Rico have been through a lot. We need to give them a  
4 lot of time to respond to these things. This is not my call.  
5 I've talked to the Committee members about this. They are  
6 local people, and they are telling us they need that much  
7 time. But that's, of course, completely within Your Honor's  
8 discretion.

9 Thank you, Your Honor.

10 THE COURT: So have you and Mr. Rosen talked about  
11 what an extension to May 31st would do with respect to plans  
12 for solicitation if the Disclosure Statement stays on track?  
13 Because I imagine that's why they're trying to keep it  
14 close.

15 MR. ROSEN: That was exactly our concern, Your  
16 Honor.

17 THE COURT: You need to share the microphone with  
18 Mr. Despins, a duet.

19 MR. ROSEN: Alphonse, Gaston. No.

20 Your Honor, that was exactly our concern. We didn't  
21 want to keep getting closer and closer to the Disclosure  
22 Statement hearing, because of the quick turnaround that might  
23 be necessary for solicitation purposes and the distillation of  
24 all the information that would come in in response to the  
25 request that we would throw out there.

1                   We thought by enlarging the period, not only getting  
2   it out sooner and going one week longer, we addressed that  
3   concern. If there is a little bit of leeway, it might be, I  
4   think at most, another seven days. But I don't think we feel  
5   comfortable getting notices out to everybody or solicitation  
6   packages out to everybody if we go closer and closer to the  
7   Disclosure Statement hearing.

8                   THE COURT: All right. Mr. Despins.

9                   MR. DESPINS: I think we can resolve this. We'll  
10   take the additional seven days.

11                  MR. ROSEN: We will go to May 14, Your Honor.

12                  THE COURT: Okay. Great. So you will submit a  
13   revised proposed order that also has the caveat that the final  
14   either is the product of the discussion with the operational  
15   people or caveat for --

16                  MR. ROSEN: We will do it before that, Your Honor,  
17   because we want to make sure we don't have multiples. So  
18   we'll discuss the operational concerns first.

19                  THE COURT: Very good.

20                  MR. ROSEN: Thank you.

21                  THE COURT: The motion with respect to that  
22   information gathering is granted on those terms.

23                  MR. ROSEN: Thank you, Your Honor.

24                  THE COURT: That is Agenda Item III.4 we've taken  
25   care of. So now we will break for lunch and return at ten

1 past 12:00. Thank you. Ten past 1:00. Sorry. It's already  
2 ten past 12:00.

3 (At 12:10 PM, recess taken.)

4 (At 1:14 PM, proceedings reconvened.)

5 THE COURT: Buenas tardes. Please be seated.

6 So, Mr. Kirpalani.

7 MR. KIRPALANI: Good afternoon, Your Honor. Susheel  
8 Kirpalani from Quinn Emanuel Urquhart & Sullivan on behalf of  
9 the Lawful Constitutional Debt Coalition.

10 I think Your Honor said before the lunch break that  
11 you wanted to hear from parties supporting the mediators'  
12 recommendations.

13 THE COURT: Yes. If I can just get clarification, I  
14 got a list of agreed time allocations, to which I've recently  
15 added Mr. Hein towards the end, but the LCDC wasn't in the  
16 list. And so --

17 MR. KIRPALANI: I believe we are, as part of the PSA  
18 creditors group. You should see something there --

19 THE COURT: Oh, yes.

20 MR. KIRPALANI: -- for PSA creditors.

21 THE COURT: Yes. Thank you.

22 MR. KIRPALANI: And I think we were allotted five  
23 minutes.

24 THE COURT: Yes.

25 MR. KIRPALANI: What we've tried to do is -- it's

1 going to be three of us trying to split up the five minutes.

2 We'll do the best we can, I promise you.

3 THE COURT: Thank you.

4 MR. KIRPALANI: And we'll try to make it as quick as  
5 possible. Again, Susheel Kirpalani for the LCDC.

6 Our focus has been, since we got involved in the  
7 Commonwealth case about a year ago now, to try to figure out  
8 what is the best path to negotiate between indisputably valid  
9 GO bonds and the Oversight Board.

10 You haven't seen much of us over the last year,  
11 because we spent most of our time out of court, in  
12 negotiations, as the Court is aware. Last spring, we entered  
13 into the initial Plan Support Agreement. That was followed by  
14 a plan in September that the Oversight Board filed. And Your  
15 Honor remembers from the summer, there wasn't a whole lot of  
16 support for that plan.

17 Your Honor asked the mediation team to come back to  
18 life and help us try to reach some consensus, and a greater  
19 group of creditors who might be supportive of doing something  
20 or not. And if not, then we would proceed to litigate. And  
21 as tends to happen in those situations, what happened is  
22 people started listening with each other, negotiating with  
23 each other. And holders of the early vintage GO bonds came to  
24 agreements with the Oversight Board, and holders of late  
25 vintage GO bonds, so that now we have a broad cross-section of



1 GO bondholders.

2 I think Mr. Rosen announced it was 58 percent of GO  
3 bond claims that support the Plan. That's, frankly, a  
4 staggering number when you consider how many tend to vote at  
5 all in a case or in any electoral process. And I think what  
6 we have is a groundswell of support to move forward. We  
7 fully endorse the mediators' recommendations, and we think  
8 that the time for Puerto Rico to end its bankruptcy is now.

9 With respect to my friends, who I've been dealing  
10 with for the last five years, holding what I would call the  
11 junior most credits of the Commonwealth, of course they will  
12 want to delay and defer Puerto Rico's emergence from  
13 bankruptcy because, of course, they know, as a junior  
14 stakeholder, the option to play for more time tends to be in  
15 the textbook.

16 But Puerto Rico doesn't have that time. The  
17 Oversight Board has cautiously revised its estimates on what  
18 is sustainable, and a groundswell of support of GO bondholders  
19 have figured out a way to work within that. And we endorse  
20 and ask the Court to adopt the mediators' recommendations and  
21 the Oversight Board's motions for setting up procedures to get  
22 going with this bankruptcy case.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Kirpalani.

25 Next for PSA creditors, Mr. Peck.

1 MR. PECK: Good afternoon, Your Honor. James Peck  
2 from Morrison & Foerster on behalf of the Ad Hoc Group of  
3 Constitutional Debtholders, also within the PSA creditor  
4 definition.

5 What I mostly want to say is how much I admire the  
6 work of the mediation team here. I participated in the  
7 mediation. I'm not going to talk about what happened, but I  
8 can certainly represent to the Court that this was an  
9 extraordinary effort, and it was extraordinary in two parallel  
10 respects. One, the schedule, which is presently before you  
11 and seems to be evolving even as we speak. And then the PSA  
12 itself and the plan that relates to the PSA.

13 This is not a colossal failure. This is a colossal  
14 achievement. And I want to express, on behalf of our clients,  
15 appreciation for the work of Judge Houser and Judge Colton in  
16 helping us get to this point.

17 I also recognize that case management is not a  
18 popularity contest. It's about what's best for the case. And  
19 I have concluded, in my judgment as an advisor to our clients,  
20 that the mediation recommendation which is before the Court is  
21 entitled to respectful deference as the best judgment of very  
22 skilled neutrals in this process.

23 Thank you very much.

24 THE COURT: Thank you.

25 MR. STANCIL: Good afternoon, Your Honor.

1 THE COURT: Good afternoon, Mr. Stancil.

2 MR. STANCIL: Mark Stancil with Willkie Farr &  
3 Gallagher for the GO Group.

4 I just wanted to underscore two points that Judge  
5 Houser mentioned but I think merit sort of reaffirmation from  
6 the bondholder side. First, as the Court is aware, there's  
7 been substantial litigation, a lot of it even by our clients.  
8 And I think -- and we've had our differences with the  
9 Oversight Board and with the other PSA creditors, even as  
10 Mr. Kirpalani was referring to his indisputably lawful bonds,  
11 that brings my reaction to say the opposite. And I think it's  
12 worth underscoring that we've gotten past that through this  
13 PSA, and it resolves a tremendous amount of controversy.

14 The schedule is integral to that. It's not a -- this  
15 is one of those situations where I think keeping the case on  
16 pace facilitates and encourages settlements. This is not one  
17 where we've reached an understanding and now we can wait and  
18 solve the other things. Speed is essential and integral.

19 And the last thing I would underscore, Your Honor, is  
20 a point that Judge Houser made. Trying to solve everything in  
21 this case is not -- at one time is not possible or feasible.  
22 And I just wanted to say we really tried. By goodness, we  
23 tried over the last year, six months to make this as broad as  
24 we possibly could. I think where we've gotten is where we can  
25 get, and we need to move forward.

1                   Thank you, Your Honor.

2                   THE COURT: Thank you.

3                   MR. MAYR: Your Honor, Kurt Mayr from Morgan Lewis on  
4                   behalf of the QTCB Noteholder Group, another of the PSA  
5                   parties. Actually, one of the two initial PSA parties when,  
6                   way back in July, we came before you asking for a stay the  
7                   first time in support of the Plan.

8                   I think -- I would like to thank the mediation team,  
9                   obviously, and Judge Houser specifically, and also reiterate  
10                  her words. If we don't -- we won't finish if we don't start.

11                  And I think the best evidence of that is where we've  
12                  been, where we've started in July, with a deal that didn't  
13                  have the involvement of the mediation team and about 20  
14                  percent of the GO bond debt, plus the Retirees, which -- I  
15                  think we'll need to remember that this isn't just a bondholder  
16                  supported plan, but one that's supported by the Retirees as  
17                  well.

18                  But you gave us the time and you gave us Judge  
19                  Houser, and with that, the time and the mediation team, we  
20                  were able to build consensus from 20 percent, to almost 60  
21                  percent of the Bonds, plus the Retirees. And I think that  
22                  that is the best evidence of how we might be able to use the  
23                  process that's being proposed to you now to be able to move  
24                  forward with the dual paths of the pressure of litigation and  
25                  continued mediation to grow consensus and hopefully get to

1 confirmation.

2 THE COURT: Thank you, Mr. Mayr.

3 Now I think we turn to Mr. Despins.

4 MR. DESPINS: Good afternoon, Your Honor.

5 THE COURT: I have you down for 30 minutes.

6 MR. DESPINS: Yes, Your Honor. Actually, 28 minutes,  
7 because I ceded two of my 30 to Ambac. So if we can adjust  
8 the clock to 28?

9 So good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 MR. DESPINS: Luc Despins with Paul Hastings on  
12 behalf of the Official Committee. I have a lot of things to  
13 cover. I'll try to do this in as organized a fashion as  
14 possible.

15 The first thing I think we need to do is we need to  
16 put things in context when reviewing where we are in the case.  
17 We've been at this for about three years, and most issues have  
18 been litigated, some to conclusion, others not. But the  
19 Oversight Board has been driving that process from the  
20 beginning, including the litigation that has taken place in  
21 the case.

22 In that context, Your Honor, the argument that we  
23 need to move really fast now, suddenly, based on the need for  
24 judicial efficiency, is a bit troubling. And let me tell you  
25 why. Not because speed is not important. We agree with that.

1 We believe that there should be speed. And we need to get out  
2 of Title III, so we don't want to delay things. But rather,  
3 because we need to compare the issues that the Court has  
4 tackled to date with the issues that, for some reason, we're  
5 being told cannot be tackled because they're too time  
6 consuming, not efficient, too costly.

7 So just to use the -- you know, the Olympic diving  
8 analogy of degree of difficulty, ERS, very high degree of  
9 difficulty. Three times in the First Circuit. Complex  
10 factual issues and all that. And the Board had no problems  
11 going full steam ahead with that agenda.

12 And by the way, we supported that, and we're very  
13 happy with the results. That's not a criticism, but it's just  
14 a contrast that -- to the issues that now the Board is saying  
15 we should not deal with, because of judicial efficiency.

16 The first one is the priority issue, and whether  
17 the -- whatever rights some creditors have under Puerto Rico  
18 law created a priority, and whether that priority is preempted  
19 in Title III. That, in terms of degree of difficulty, again,  
20 going back to the diving analogy, is pretty straightforward.

21 No factual issues there. It's pretty  
22 straightforward. And also, it's straightforward because the  
23 Board, from the beginning of the case until a few weeks ago,  
24 has consistently taken the position that these priorities are  
25 preempted. And that -- we just can't get around that.

1           Just a few weeks ago, this is in, you know, docket  
2 10611, the Board said, in Title III, however, because all  
3 nonbankruptcy law requiring full payment of prepetition  
4 obligation is preempted by bankruptcy law, the debtholders are  
5 all sharing losses arising from the Commonwealth's fiscal  
6 emergency consistent with the equality policy underlying all  
7 bankruptcy law that creditors of equal rank share the losses.  
8 That's in response to the Revenue Bondholders.

9           And then even better than that, I should have quoted  
10 that in my Priority Objection, they say, simply put, these  
11 priority statutes -- this is in document number 10613. Simply  
12 put, these priority statutes, if they're not preempted, they  
13 would block any possible restructuring.

14           And that's exactly our point, Your Honor. So that  
15 issue, we cannot get around it. And on top of that, the First  
16 Circuit, when they affirmed your decision on ERS, at the end,  
17 they addressed the ERS Bondholders' argument that there are --  
18 lawful priorities on 201 are protected because of 201 -- I  
19 forget if it's (n) or (m), but you know the section I'm  
20 talking about.

21           And the First Circuit said no. That applies in the  
22 plan, fiscal plan context, not in Title III. They said that  
23 point blank. And the people can argue, well, that was not  
24 exactly in the same context, but that's a hard statement for  
25 the First Circuit to dial back at this stage.

1           And, therefore, Your Honor, our point is let's bring  
2   it on. Let's have a ruling on that issue, because you're  
3   going to -- you're going to be dealing with that issue. You  
4   asked counsel for the Oversight Board, will I have to deal  
5   with that and the revenue bonds? And the answer is yes, you  
6   will. So you will.

7           And by the way, according to the mediation team, you  
8   should rule on them really quickly. So you will have to face  
9   the preemption issue in that context. And it's not different,  
10  because they're not arguing Title II preemption only, they're  
11  arguing Title III preemption. It's in their papers. There's  
12  no way to escape that.

13          So you will have to address that head on. And if  
14  that's the case, are we going to have one ruling where I  
15  believe you will conclude that those laws are preempted, and  
16  then another ruling where, let's settle that because it's a  
17  complex issue? We just can't pretend like that, Your Honor.  
18  I'm all in favor of settlements, but we can't do that.

19          The next point is the PBA lease issue. And again,  
20  going back to the diving analogy, degree of difficulty. It's  
21  already all briefed. And by the way, it's not -- the issue is  
22  a judge -- whether we should get a judgment or they, being the  
23  bondholders, should get -- the PBA bondholders should get a  
24  judgment on the pleadings. That's all been briefed except for  
25  one reply that's due.



1           Those leases, by the way, the Board -- we're  
2 co-plaintiff with the Board on that issue -- has stated very  
3 clearly, these leases say you need to pay as much rent as  
4 necessary to pay the bonds. If that's a true lease, then I  
5 think I'm ready to hang up my bankruptcy law practice because  
6 I just -- it's clearly a financing lease that, therefore,  
7 they're unsecured creditors.

8           And is that complex to decide? That's a showstopper.  
9 That's the whole concept of the -- of the mediation team as  
10 to why you need to go forward really quickly on the revenue  
11 bond issues, is because they're showstoppers. These two  
12 issues, priority that I just mentioned, and the PBA issue,  
13 is a showstopper, because they're paying them a billion and  
14 change for that rent as part of this quote/unquote settlement.

15           If Your Honor found or denied their motion for  
16 judgment on the pleading, and of course, in order to do that,  
17 you would have to delve somewhat in the issue the leases  
18 provide, that plan is dead, dead, dead. So I'm all in favor  
19 of settlements, but we cannot pretend, you know, that these  
20 issues are not there.

21           THE COURT: Well, I think what I've been reading and  
22 hearing is that there is a deal to which the GO bondholders  
23 and PBA people wish to subscribe, taking into account all  
24 sorts of risks and knowing that the issues are going to be  
25 litigated in the revenue bond context. There isn't a group of

1 revenue bondholders who are willing to agree to a deal. And  
2 yes, there is a possibility at the end of the day of  
3 inconsistencies, but right now, they have a significant group  
4 of supporters.

5 And you can attack, in the context of a confirmation  
6 proceeding, the reasonableness of this settlement with this  
7 group. It's not that the issue goes away, goes away. It does  
8 come back in a different package in the context of a proposed  
9 group of settlements under a plan. But I think I'm hearing  
10 that as the rationale. Somebody can tell me if I'm wrong, but  
11 I think that's what I'm hearing.

12 MR. DESPINS: Of course that's the rationale, Your  
13 Honor. And I was going to get to that, which is, I was going  
14 to say, and I'm leading on to that, which is -- you would tell  
15 me, and actually you just did, hey, it sounds like you have a  
16 great confirmation objection, so why don't you make it then.  
17 And I'll get to that in a second.

18 THE COURT: That would have been more succinct.

19 MR. DESPINS: Okay. But the point, though, on  
20 priorities that -- and we're going to have to be very precise  
21 about this. There are two groups here. There's the  
22 Unsecureds -- us and the Unsecureds, the bondholders that say  
23 they're entitled to a priority.

24 The Board and the bondholders are free to deal with  
25 the treatment of the bondholders, saying -- if they're willing

1 to, say, not get more than 70 percent on the dollar or  
2 something, that's their prerogative. But they're not free as  
3 part of the settlement between them where the fiduciary, the  
4 only fiduciary in the case, which is the Committee, is not  
5 present, to determine that we are junior to them. And that's  
6 what the settlement does. And that's critical.

7           It's not as if they're secured and we're dealing with  
8 their collateral here. Some of them are arguing they're  
9 secured. I'll come back to that in a second. But it's not  
10 that they're secured and they're making a gift out of their  
11 collateral to junior creditors. If they're content to receive  
12 only 70 percent on a dollar, that doesn't mean they can block  
13 me to say, I want more, and the debtor is able to pay more.  
14 It's not through a settlement that they can foreclose that  
15 argument.

16           THE COURT: And you have that objection --

17           MR. DESPINS: Yes, but, Your Honor --

18           THE COURT: -- in the actual confirmation as well,  
19 and you raised it with respect to the Retirees?

20           MR. DESPINS: What's going to happen, Your Honor, is  
21 that, to be candid, they're trying to leverage you with what I  
22 call the confirmation express, which is a term we use always  
23 in the bankruptcy context, which is --

24           THE COURT: And you're trying to leverage me with the  
25 confirmation brakes. So that's how it works --

1 MR. DESPINS: No. No. But, I mean, what's going to  
2 happen is we're going to spend millions of dollars soliciting  
3 votes and all that over this plan. And then you're going to  
4 be faced with a Hobson's choice of saying, okay, there's no  
5 priority. This plan cannot go forward. Or, my God, you  
6 know, we've wasted all this time and money. And that's the  
7 issue.

8 The question is, what is the downside of deciding  
9 that issue of my priority today? What is the damage? I want  
10 to hear that from people as to what the damage is. We don't  
11 -- the answer is they don't know the answer to that. They  
12 don't want the answer to whether it's a priority now, because  
13 the whole thing falls apart. They know there's no priority,  
14 because they're arguing it today.

15 And by the way, you will need to decide the priority  
16 issue not only in the revenue context, Your Honor, but under  
17 the Plan. I think it's Section 16. -- sorry, 17.3, the Plan  
18 that they filed a couple days ago -- sorry. 71.3. 71.3.  
19 It's entitled "preemption of laws."

20 So they will ask you to enter a confirmation order  
21 that approves a plan that says that all laws of Puerto Rico  
22 are preempted by Title III. That's not a settlement. That's  
23 an order from the Court that you need to approve that. So  
24 you're going to have to confront that issue anyway head on,  
25 not in the context of a settlement.

1           In addition to that, people like Mr. Hein are saying,  
2 I think I'm entitled to get paid in full. I have a priority.  
3 They cannot -- they cannot take away -- if he has a priority,  
4 they cannot take that away through a class vote, Your Honor.  
5 You will need to confront that issue. I think he will lose  
6 that point, but you will need to decide up or down, whether he  
7 has the priority.

8           So the question is, if that's going to happen anyway,  
9 if he --

10           THE COURT: So you're saying that even if he ends up  
11 in the consenting class, he has an entitlement --

12           MR. DESPINS: That you cannot deprive. At least I  
13 think that's what people will argue.

14           THE COURT: I know that's the argument.

15           MR. DESPINS: That's the argument.

16           THE COURT: You're observing that that's the  
17 argument.

18           MR. DESPINS: That's correct, Your Honor.

19           THE COURT: And I'm going to hear lots of arguments.

20           MR. DESPINS: I'm sorry?

21           THE COURT: I'm just saying, and I'm making sure  
22 that -- I understand that that's the argument that I expect.  
23 You're saying that that's the argument. You're not  
24 necessarily making that argument today.

25           MR. DESPINS: Correct. But I know Mr. Hein has

1 | already made the argument.

2 | THE COURT: Yes.

3 | MR. DESPINS: The same thing, for example, the issue  
4 | of why are we not confronting the issue of whether the GOs are  
5 | secured or not. They say that they're secured by a pledge of  
6 | the full faith and credit. That's not collateral. These are  
7 | words.

8 | And how are we going to -- and Mr. Hein, of course,  
9 | is saying, I'm secured. I'm not giving up that claim. You  
10 | cannot deprive Mr. Hein, if he's secured through a class vote,  
11 | of his security interest. So we need to confront that issue.  
12 | Of course, I don't think he has a secured interest, but the  
13 | point is, these issues are discrete. They're legal. They  
14 | don't take a lot of time. And it makes no sense to leverage  
15 | the Court and everyone at this stage.

16 | The argument you're hearing is, don't look at the  
17 | Plan, Judge. Don't look at the Plan. But let's assume for a  
18 | second that the Plan said the following: Puerto Rico people  
19 | will not get distributions. And you'll say, well, it doesn't  
20 | say that. Does it?

21 | My point is it does, because we're getting 3.9  
22 | percent. So are we not going to look at that and say, wait  
23 | and minute. We should look at that before sending it out for  
24 | a vote, soliciting people saying, you should vote for that 3.9  
25 | percent. It's a great deal, et cetera.

1           It's just, Your Honor, these issues need to be  
2 addressed, because this is not a simple two-party settlement.  
3 They're impacting the priority of other creditors.

4           The PSA argument I've talked about. And let's talk  
5 about the challenge to the GO bonds now that also would be  
6 precluded from review. And I'm not asking the Court to  
7 enter -- to have a full trial on the issue. The only thing  
8 that's pending before the Court right now are motions to  
9 dismiss.

10           And I want to make sure you understand that despite  
11 the announcement by the Board that they're settling this in  
12 the case of the 2014 GO bonds for a ten percent discount, and  
13 that's a beautiful -- it's a nice headline, that's not the  
14 case, Your Honor. Because if you look at all the fine print  
15 of the calculation, because they inflated the claims of the  
16 2014 GO by including original issue discount, the real  
17 concession by the 2014 GO is six percent, okay?

18           So these are people that might not have valid bonds  
19 at all, and now they're getting essentially 94 percent of that  
20 bond. We were co-plaintiffs on that. There was an agreement  
21 to consult with us that was breached at a return. And the  
22 fact that the mediators decided not to include us, because  
23 that's -- I think that's what I heard from Judge Houser,  
24 saying, well, you know, it's my call as to who gets in the  
25 room and who doesn't, but at least it's clear that we were not

1 in the room. That doesn't change the fact that that agreement  
2 was breached.

3 That was a post-petition agreement with the Board,  
4 while we were co-plaintiffs with them on these claims, and  
5 they decided to breach it. But it goes back to the issue  
6 that we've said before. They are not a fiduciary. They  
7 disclaim any fiduciary duties to us. We are the only  
8 fiduciary in the case. We were the co-plaintiff, completely  
9 excluded from these discussions. Now they're settling this  
10 for 94, six.

11 I want to pause on that for a second. That means  
12 that the odds of them losing that is sort of 94 percent to six  
13 percent, the other side. That's just beyond belief that they  
14 would do that. And then they settled our 2011 objection for  
15 two percent. Again, 98 percent risk that we would lose that.

16 What we're saying is that, Your Honor, decide the  
17 Motion to Dismiss. That will bring so much clarity on that  
18 issue, because I believe it's fairly easy to deny their Motion  
19 to Dismiss. And you might say, well, what if I actually grant  
20 the Motion to Dismiss? It's pennies that we're giving up.  
21 And on top of that, that money is not getting to the  
22 Commonwealth. Right?

23 I want to make sure you understand this. That money,  
24 the savings, is going to Mr. Kirpalani's pocket. Not him  
25 personally, but his client's pocket, although that would be a



1 nice day. So the point is that it's going to -- it's not  
2 going to the Commonwealth, that money.

3 So the Commonwealth has already accepted the fact  
4 they don't need that money to live, right, because it's going  
5 to the other bondholders. So why not have a decision, again,  
6 on the Motion to Dismiss? Because we feel fairly strongly  
7 that that Motion to Dismiss would be denied. And if they're  
8 denied, how can the plan go forward with a handicapping of 98  
9 to two?

10 And also, you have to think about who was in that  
11 room when they negotiated that deal? The holders, the  
12 defendants. Because the LCDC -- I forget the name of that  
13 group, but the Lawful Debtholders, they hold 2011 bonds. So  
14 of course they're in a room wherein there's a negotiation as  
15 to how much of a hit should the 2011 bonds take? And low and  
16 behold, they ended up with a two percent hit. Well, I think  
17 you see the picture. The point, Your Honor, is that these  
18 issues, especially the priority issue, should be decided.

19 And let's talk about the mediators' position,  
20 vis-a-vis the Committee. It was kind of -- you know, I've  
21 known Judge Houser for many years, and I have the utmost  
22 respect for her. But it was kind of surprising. Basically,  
23 the argument is we cannot resolve everything at the same time.  
24 Okay. I'll go for that. But what they did in this deal, Your  
25 Honor, I want to make sure you know this, they gave the

1 bondholders a veto over distributions to us.

2 And you say, well, where do you find that? There's a  
3 debt cap provision. And that debt cap, the way it's  
4 structured, it caps the amount of bonds we can get at the  
5 current amount on the Plan that gives us 3.8 or 3.9 percent.  
6 So they have a veto over that.

7 So what kind of process is this where we think that  
8 we're going to make progress later, where these guys -- the  
9 money would have to come from them, or at least their  
10 largesse. They would have to say, well, we actually feel good  
11 about these guys. Let's give them some money. It's  
12 completely warped to have given that veto to the bondholders  
13 and to say, let's keep talking.

14 By the way, we've had eight months to talk, and it  
15 was clear from Judge Houser's point -- I'm not going -- you  
16 know, I'm not talking about mediation here, but just based on  
17 what she said, we were not included in that process. So how  
18 are we to believe that, in fact, we will be included, where  
19 now they have a veto over any distribution to us other than  
20 cash.

21 It's true that the Commonwealth could decide to give  
22 us five billion, but I don't think that's going to happen.  
23 The only way to give us distribution is probably through more  
24 bonds, but they have a veto over that under their deal.

25 So we're all in favor of talking, but that's not

1 going to happen here, or at least it should have happened in  
2 the last eight months and has not happened. I don't see how  
3 there's going to be a breakthrough unless they realize, my  
4 God, we could lose the priority issue, and we need to deal  
5 with these folks. And the people of Puerto Rico are not going  
6 to end up with 3.9 percent, which is, frankly, insulting.

7 The only thing we're asking, Your Honor, is for  
8 showstopper issues to be decided now. The priority issue is a  
9 showstopper. The PBA lease issue is a showstopper, and so is  
10 this so-called settlement of the GO claims.

11 In terms of whether there should be a blanket stay on  
12 any proceedings, which is essentially what's being suggested,  
13 Your Honor, we oppose that completely. We filed, if -- it was  
14 Monday night or Tuesday morning, a motion on classification  
15 that, I want to be clear, I don't think you can settle a  
16 classification issue unless everyone agrees to it. And it's a  
17 fundamental classification issue.

18 And we're asking the Court not to stay that; that  
19 that issue should go forward because, again, if we're right on  
20 that, this Plan, unless we are brought up to the level we  
21 should be at, it cannot go forward. And the only reason not  
22 to impose a stay on that would be clearly to, you know,  
23 prejudice the issue of the classification. So there's no  
24 compelling reason. Again, classification, it's a discrete  
25 legal issue. There are no factual issues involved.

1           And the First Circuit, Your Honor, has a very  
2 strict -- I'm not going to argue the merits of the motion, but  
3 very strict approach on classification, which is contrary to  
4 the other circuits. And based on that, we believe that these  
5 types of motions, you know, you can make decisions as they are  
6 filed, if they are filed.

7           I have no -- by the way, it's not like I have 15 of  
8 those lined up. As I stand here today, I don't have any more,  
9 but certainly that one should not be stayed.

10           We also believe -- now I'm going to go into the  
11 Disclosure Statement scheduling, because we're combining the  
12 time on these two issues. We believe that that issue should  
13 be taken up later in the sense that this Disclosure Statement  
14 was filed two or three business days ago.

15           We've skimmed it. We disagree with Mr. Rosen that  
16 it's comprehensive. There are huge issues. I'll give you  
17 just a vignette on that. On the issue of essential services,  
18 they're saying we don't need to talk about essential services.  
19 They're not relevant. That's the disclosure.

20           So you might say, well, file your objection to the  
21 Disclosure Statement and you can be heard. But that's not the  
22 issue, Your Honor. We will need extensive discovery before  
23 the Disclosure Statement hearing is -- takes place on all  
24 these issues of why, for example, there are guarantees that  
25 are being assumed.

1           A guarantee is a financial instrument. That is not  
2 exactly a contract. Why they're assuming these guarantees,  
3 the issue of essential services -- or put it a different way.  
4 What can the Commonwealth afford to pay is a critical issue at  
5 confirmation.

6           And then the whole issue of settlement. They're  
7 completely silent as to the rationale for the settlement of  
8 these GO bonds. For example, why is it that the 2011 GO bonds  
9 are settled for less than half than the 2012? What's the  
10 rationale for that, other than the fact that the lawful  
11 holders have 2011 bonds and maybe less of 2012? These are --  
12 there are tons of issues like this. Why wasn't the Committee  
13 involved in these issues?

14           So there's going to be extensive discovery that's  
15 going to be needed. And from a due process point of view, I  
16 know you're sensitive to those issues. How can we schedule a  
17 disclosure statement hearing on a disclosure statement that  
18 was filed two business days or three business days ago?

19           The parties need to be able to digest it, to read it,  
20 to digest it, and to come to Your Honor with an intelligent  
21 position on, okay, we need X amount of time. Let me show you  
22 why. I can't do this today, and I don't think you should  
23 actually schedule that hearing based on that motion that was  
24 filed before the Disclosure Statement was filed.

25           Two seconds, Your Honor. On the Disclosure

1 Statement, there are all sorts of issues regarding PBA rent.

2 What is the PBA rent? How does it relate to the billion  
3 dollars and change that's being paid to the PBA bondholders?

4 There are tons of issues that we need discovery on.

5 You might say, well, you can object to the Disclosure

6 Statement and say that it doesn't contain adequate

7 information. But the point is, before getting the discovery,

8 I don't know what the real facts are. And in order to make an

9 objection, I need to know what is the rent. I can't just say,

10 we don't know what the rent is. You need to disclose it. We

11 need to actually get the facts on that. The same thing for

12 the assumption of guarantees, et cetera, et cetera.

13 Now, to get to a more granular point, we have one

14 point with respect to the revenue bond litigation. And by the

15 way, on the revenue bond litigation, I think -- I know that

16 the mediation team wants this to be resolved before June 3rd,

17 but practically, how is that going to happen?

18 Meaning, even if you were able to decide, I assume

19 that if the revenue bondholders lose, they will appeal this.

20 So how can there be finality before June 3rd in any event?

21 That's one of the points we made in our objection.

22 But on that issue of the revenue bonds, we believe

23 one issue was left out, which is whether the revenue

24 bondholders have a claim against the Commonwealth in light of

25 the nonrecourse nature of their claims. So that's a more

1 granular point, but I want to make sure it's not lost. We  
2 made that point in our response to the mediation report, but I  
3 want to make sure that it's not lost.

4 And the last point is that the DRA parties, which are  
5 GDB bondholders, want our objection or part of our objection  
6 decided before confirmation. Again, I'm looking at this. How  
7 is that a showstopper? Whether the objection is resolved or  
8 not doesn't affect the Plan in any way. It's nice to have,  
9 from their point of view, but I don't see it as a showstopper  
10 when compared to the issues that we've raised.

11 Let me just -- two seconds, Your Honor. I want to  
12 consult with my colleague.

13 Okay. So I finished before my time, unless you have  
14 questions.

15 THE COURT: Just one moment. Let me check. Not at  
16 this time.

17 MR. DESPINS: Thank you.

18 THE COURT: I have AAFAF next. Mr. Rapisardi. And I  
19 have you down for ten minutes.

20 MR. RAPISARDI: Oh, I'll be much shorter, Your Honor.  
21 I'll try to. Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. RAPISARDI: Your Honor, I wish to comment upon  
24 the objection that the government filed to the Disclosure  
25 Statement scheduled motion. Your Honor, there is no doubt

1 that the Board's filing of its Amended Plan of Adjustment,  
2 Amended Disclosure Statement and related scheduling motions  
3 initiate a confirmation process that has the potential, if  
4 successful, if successfully completed, to have a profound  
5 impact on the Commonwealth of Puerto Rico, its creditors, and  
6 importantly, and most importantly, the people of Puerto Rico.

7 We appreciate the work of the mediation team and the  
8 Proskauer team that has gone into accomplishing this task in  
9 the form of the Amended Plan of Adjustment, Disclosure  
10 Statement that was filed. And I know that was no easy task,  
11 and it took a lot of time and patience.

12 And it is with reluctance that we filed the  
13 objection. And in that regard, the words I speak today and  
14 the words that were in our objection are carefully chosen.  
15 And I believe it is words that -- just to reemphasize some  
16 points.

17 With regard to the Amended Plan, the Government of  
18 Puerto Rico has been clear about its policy priorities  
19 throughout these cases. In particular, Governor Vazquez has  
20 emphasized that the interests of one of the most vulnerable  
21 groups in Puerto Rico, specifically governmental pensioners,  
22 must be protected by either honoring the government's prior  
23 commitments to retirees or mitigating any detrimental impacts  
24 to them through future benefit restoration.

25 Governor Vazquez has also been clear about minimizing



1 pension cuts, emphasizing that if bondholders receive improved  
2 treatment under any agreement, then Puerto Rico's governmental  
3 pensioners should also receive improved benefits as a matter  
4 of fairness and justice. And because the Amended Plan in its  
5 current form requires the enactment of new legislation to  
6 issue new bonds, there is no viable path to confirm the  
7 Amended Plan without the elected Government of Puerto Rico  
8 being on board with that Plan.

9           However, to be clear, the government does not  
10 believe, as some parties have claimed, that the mediation  
11 process has been a colossal failure, or that the Board's plan  
12 and disclosure statement process was designed to jam creditors  
13 or impair their process rights, due process rights. We leave  
14 this kind of heated rhetoric about the Plan and the process to  
15 other parties.

16           To the contrary, we are in an ongoing and an  
17 accelerated process to have the most open and responsible  
18 dialogue we can with the Board, which is reflective of the  
19 current level of good faith discussion going on between  
20 counsel for the -- for AAFAF and the Board and its  
21 representatives. This dialogue will be the stage for what we  
22 hope and believe will be a very successful restructuring.

23           But the government's repeated concerns about  
24 treatment of governmental pensioners are not new, and at this  
25 late date, have not been satisfactorily resolved. The cost,

1 in terms of time, money and resources for Puerto Rico are  
2 simply too high to charge ahead without governmental support  
3 in rapid fashion on a plan that lacks the government's support  
4 from start to finish. And for this reason, the government  
5 filed its objection that's now before you.

6 The Board has noted that the government's rejection  
7 of -- or stated objection of the Plan is temporary in nature,  
8 and hopefully will be changed. And there seems to be an  
9 element of confidence that it will be resolved. We are  
10 hopeful as well.

11 But, Your Honor, we're equally frustrated as well  
12 because, as I said, this is not a new issue. And the risk of  
13 not reaching an agreement with the Board should not  
14 unnecessarily be borne by the people of Puerto Rico, who are  
15 paying for the cost of this Title III process, and who are  
16 living every day with the pressure of a process that threatens  
17 the most vulnerable among them.

18 The scheduling motion sets up a comprehensive time  
19 line, which in order to hit all of the deadlines, everything  
20 must go right. For that reason, Your Honor, support by the  
21 government, as we witnessed in GDB, the Title VI case, and in  
22 COFINA, the Title III confirmation process, government support  
23 was essential at the outset.

24 And the government came through, both the legislative  
25 and executive branches, in passing legislation at the outset.

1 Mr. Despins referred to the confirmation express, and I can't  
2 resist, being a Chapter 11 lawyer for many years -- yes,  
3 PROMESA gives the Oversight Board authority to be the  
4 conductor of that confirmation express. However, it is  
5 important to recognize and understand, that train cannot move  
6 forward unless it has the tracks necessary to proceed forward.  
7 The longer this impasse remains unresolved, the greater risk  
8 that the confirmation will be derailed, as we will find that  
9 train will not have the tracks before it to proceed,  
10 irrespective of any level of creditor support.

11 Your Honor, if this Court is inclined to overrule the  
12 government's objection, we hope all that -- take note of the  
13 cautionary warning we are expressing in our -- we expressed in  
14 our objection and I'm expressing today.

15 That's it, Your Honor. Thank you.

16 THE COURT: Thank you, Mr. Rapisardi.

17 Now I have Mr. Ellenberg, for 15 minutes.

18 Good afternoon.

19 MR. ELLENBERG: If the Court please, Mark Ellenberg  
20 on behalf of Assured Guaranty.

21 Your Honor, I'm going to be addressing together both  
22 our objection to the scheduling of the Disclosure Statement  
23 hearing and our objection to the stay of the pending Motion to  
24 Dismiss the GO Claim Objection based on the debt limit  
25 challenge, and as well, the more general stay of all

1 litigation, including also litigation over the priority  
2 challenge.

3           As I'll discuss in more detail, the mediation team,  
4 having set in motion a consensual litigation schedule back in  
5 November, a schedule that was hammered out in hours of hard  
6 fought meetings and had universal nearly buy-in, has now  
7 reversed its course. The reason for this about face is that  
8 the FOMB has succeeded in adding some additional hedge funds  
9 to the PSA originally announced earlier in the year. But  
10 their -- but that development does not justify scuttling a  
11 procedure that has been set in motion, had buy-in, and most  
12 importantly, was working.

13           First, Your Honor, the PSA and the plan based on it  
14 faced serious obstacles. It still excludes bond insurers,  
15 National and Assured, who collectively own more than two and a  
16 half billion of General Obligation bonds. In addition, we own  
17 bonds in other municipal entities such as HTA, PRIFA and CCDA.

18           Also excluded from the Plan is bondholder Invesco,  
19 who adds another 500 million to the opposition, just totaling  
20 over three billion dollars of bonds, GO bonds that are not  
21 included in this plan, and I might add, were not included in  
22 the negotiations that led to this plan.

23           Mr. Kirpalani referenced junior creditors seeking to  
24 slow down the confirmation process. We are not junior. We  
25 hold the same GO bonds, or we insure the same GO bonds that

1 Mr. Kirpalani's clients hold and that all the hedge funds hold  
2 who have signed onto this plan.

3 We are entirely pari passu with them. We are not  
4 junior, nor are we seeking to slow down this plan. What we  
5 are seeking is to stick with a schedule that was both rational  
6 and well thought out and which, among other things, has  
7 scheduled for April 30th, a hearing on the debt limit  
8 challenge to the GO bonds.

9 We've already filed that motion in accordance with  
10 the mediation team's prior recommendation. It's already on  
11 the schedule. Why are we taking that off? It is a gating  
12 issue. Everyone agrees it is a gating issue. Why are we  
13 going to take that off the calendar?

14 So we're not trying to delay. We're trying to have  
15 the Court address issues in a fair and rational way. Fair not  
16 only to us, but to the Court as well.

17 Now, Your Honor, as you've heard, further obstacles  
18 to this plan are that it's opposed by the Commonwealth  
19 Government. It's opposed by the Bonistas del Patio, who  
20 actually supported the prior PSA. And it's opposed by the  
21 UCC.

22 What is the reason given by the mediation report, and  
23 then echoed in the Oversight Board's papers, for staying the  
24 hearing scheduled for April 30th? Only one reason is given.  
25 Mr. Despina alluded to it. The reason given is that there's

1     been a settlement of that issue.

2                 Well, no, Your Honor, there hasn't. Indeed, it's  
3     called a global settlement. There is nothing global about it  
4     at all, because that litigation is based on claims -- sorry,  
5     based on objections that are filed to claims, including the  
6     claims of Assured Guaranty.

7                 It may be that other creditors who are similarly  
8     situated have agreed to settle similar objections to their  
9     claims. That's great. That's their right. What they cannot  
10    do is settle the allowance of my client. That is personal to  
11    us.

12                Now, Your Honor asked Mr. Despins, can't a consenting  
13    class approve that settlement and bind me to it? No, not even  
14    close. That is not remotely possible. That goes to the  
15    allowance of my claim. Plans deal not with allowance, but  
16    with the treatment of allowed claims by class. Okay? It does  
17    not deal with the allowance of claims. The allowance of  
18    claims is governed by Rule 3007 and by Rule 9014.

19                Each one is, in essence, an adversary proceeding.  
20    Mr. Rosen commented that they had 173,000 claims and they've  
21    been working through them. That's the claim allowance  
22    process. Has nothing to do with the plan of reorganization.  
23    No vote of any class, with respect to confirmation of a plan,  
24    can take away my right to litigate the allowance of my claim.

25                THE COURT: Well, let me just say that I'll expect

1 that the Oversight Board, when it comes back for remarks, will  
2 tell me whether I was wrong in assuming that their structure  
3 presumes that your client's claim is allowed in the context of  
4 this plan, and then treat it in a manner that's discounted as  
5 opposed to being knocked off the table entirely by an  
6 objection that isn't being litigated.

7 MR. ELLENBERG: Well --

8 THE COURT: I could be wrong about that.

9 MR. ELLENBERG: Well, Your Honor, perhaps they'll say  
10 that, but they would be wrong. And the reason they would be  
11 wrong is that once a General Obligation bond claim is allowed,  
12 it is no different from any other General Obligation bond  
13 claim. They all have the same priority, or not, if you ask  
14 Mr. Despina. They all have the same claim to collateral, or  
15 not, if you ask Mr. Peck. But they are all the same.  
16 Whatever they are, they're all the same.

17 It doesn't matter if they're from 2011 or from 2014  
18 or in between. Okay? A GO bond is a GO bond. It is a  
19 general obligation of the government of Puerto Rico. The Plan  
20 shatters them into multiple classes and gives each one a  
21 different recovery.

22 So they cannot tell me they're allowing my claim in  
23 full and that people in the class just happened to agree to a  
24 different amount. That's ridiculous. There is no way you  
25 could justify treating one class of GO bonds different from

1 another class of GO bonds if they are all allowed claims.

2 Makes no sense. It's impossible.

3           So there is no way that that can be what they're  
4 doing in this plan. And there is no way they can take away my  
5 right to litigate the allowance of my claim. That goes with  
6 respect to priority, and it goes with respect to the debt  
7 limit challenge. It also goes with respect to whether PBA is  
8 a sham. Those are all filed as objections to individual  
9 claims. It is not a confirmation issue. It is not a plan  
10 issue. It has to be decided prior to confirmation.

11           And, Your Honor, it's already on the calendar.  
12 Again, don't accuse me of trying to slow this train down.  
13 What I want is what Judge Houser said she wanted, which is a  
14 fair, full, and rational process where the objectors get to be  
15 heard. Okay? It's on the calendar for April 30th.

16           Now, Your Honor, let's talk about the disclosure  
17 statement proposal for June 3rd. I've been practicing  
18 bankruptcy law since 1984. I'm trying very hard to stop  
19 practicing any law. This case keeps getting in the way. If  
20 we had the Chapter 11 case of the corner grocery store, we  
21 would not be ramming through a confirmation schedule  
22 comparable to this one. This is a very complex, difficult  
23 case. The schedule proposed on its face is absurd. I cannot  
24 imagine and I have never seen a comparable case with such a  
25 compressed schedule.



1                   And let's think about not only what it's doing to the  
2 parties, but what it's doing to you, Your Honor. We are  
3 supposed to have a disclosure statement hearing on June 3rd  
4 under Judge Houser's proposal. You will be deciding major  
5 issues in this case through the end of May.

6                   Well, how does that work? When are we supposed to  
7 file our objections to the Disclosure Statement, and when are  
8 they supposed to -- when is the Oversight Board supposed to  
9 reply to those objections? Clearly, it's going to be some  
10 time in May, if not sooner.

11                  Will you have ruled? Will you have not ruled? What  
12 are we doing to ourselves? This makes no sense.

13                  And the June 3rd date is completely artificial.  
14 There is no magic to it whatsoever. The only urgency in this  
15 case is that the hedge funds who have agreed to this deal want  
16 to trade out of their positions as soon as possible. That's  
17 the urgency that's driving us all here today. And so to meet  
18 that totally artificial goal, we're going to put the parties  
19 and the Court under tremendous time pressure to deal with  
20 multiple, complicated issues at once, and then to have you  
21 have to decide them.

22                  And as Mr. Despins said, well, what if there is an  
23 appeal? Your Honor, this doesn't work. What worked and what  
24 made sense was the schedule that you approved last November.  
25 It's already in motion. It's doing its job. And it will get

1 us where we need to be. And when we get through it, we will  
2 know where we stand with respect to this Plan and its  
3 potential to be confirmed. And that's what the Court should  
4 stick to. Then everyone will be happy, and they'll get what  
5 they want. And most of all, you will have achieved due  
6 process.

7 Your Honor, we don't like being here as the loyal  
8 opposition. We much prefer to be on board with a consensual  
9 plan. We weren't given that opportunity here.

10 And by the way, Your Honor, you said earlier that the  
11 revenue bond creditors, of which I'm also one, were unable to  
12 reach agreement on a plan. Not the case, Your Honor. We  
13 didn't even have the opportunity. There has been no effort to  
14 negotiate an HTA plan or a PRIFA plan or a CCDA plan. We  
15 haven't even gotten there yet.

16 As Judge Houser said, you had to start somewhere, and  
17 she decided to start at the GO bonds. So it's not a question  
18 of people refusing to agree to a plan. They haven't even had  
19 a chance.

20 But, Your Honor, I stood here last year and spoke in  
21 favor of the COFINA settlement. And one of the things I said  
22 at that time is that Assured and the other monoline insureds  
23 in this case are the only parties that have a true, long-term  
24 interest in the economic well-being of Puerto Rico. We have  
25 insured bonds that go out 25 years and longer, and five years

1 from now, 10 years from now, 20 years from now, we're still  
2 going to be paying claims. We have over five million dollars  
3 of exposure to this island. That is a big bet, and we want it  
4 to go as well as we can.

5 We supported COFINA because we thought it was in the  
6 best interest of the Commonwealth. We do not feel that this  
7 plan is in the best interest of the Commonwealth at all, and  
8 primarily because it is based on the fool's gold of this debt  
9 limit challenge, which splintered the GO Group.

10 Congratulations to them for coming up with this  
11 strategy and implementing it, but ultimately, it's going to  
12 make this case longer, not shorter, because ultimately, it's  
13 going to fail on the merits. We'll be back to ground zero,  
14 starting all over again.

15 What needs to be done is to get all the GO  
16 bondholders in a room and negotiate a GO plan that treats  
17 everyone the same and treats everyone fairly.

18 Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Ellenberg.

20 Mr. Natbony.

21 MR. NATBONY: Thank you, Your Honor.

22 In addressing the Amended Report, I had several  
23 issues to address procedurally. First, with respect to the  
24 lift stay motions. Second, with respect to the adversary  
25 proceedings. A third issue relating to the timing of the

1 Section 20 -- 926 motion. And then in the context of those  
2 three issues, I will address Judge Houser's proposed  
3 revisions that were mentioned in her initial presentation to  
4 Your Honor.

5 So first, with respect to the lift stay motions, at  
6 this point, there actually seems to be remarkably little  
7 disagreement between the parties. Since the mediation team  
8 issued its initial interim report, the revenue bondholders  
9 have been clear and consistent that the lift stay motions are  
10 an appropriate vehicle for addressing the gating issues  
11 concerning the revenue bond issues. And more recently, it  
12 also became clear that the Oversight Board shares that view  
13 that it could be a viable vehicle.

14 In fact, in response to the Amended Report, the Board  
15 recognized that the lift stay motions are, quote, one possible  
16 way to obtain rulings on the revenue bond issues. And that's  
17 at paragraph 12 of their Response.

18 So in light of this agreement, we suggest and submit  
19 that the lift stay motions are really the only vehicle that's  
20 necessary to address these gating issues. And prioritizing  
21 and forcing the parties to move forward with another vehicle,  
22 such as this simultaneous summary judgment proceeding, will  
23 result in duplication, a waste of resources, and an undue  
24 burden both on the parties and the Court.

25 Now, interestingly, in contrast, in the case of the

1 adversary proceedings, there is, you know, not the consensus  
2 that we talked about. The revenue bondholders' basic  
3 objection always has been that they're largely duplicative of  
4 the enforcement actions that the revenue bonders would hope to  
5 bring if the grant of stay relief is done. So it doesn't make  
6 sense for the parties to be expending resources on the  
7 adversary proceedings, unless and until the lift stay motions  
8 are resolved.

9           Furthermore, only an enforcement action in another  
10 forum will actually permit the revenue bondholders to raise  
11 the issues that the First Circuit in Ambac held could not be  
12 addressed because of Section 305, such as the preemption of  
13 the moratorium laws under Section 303, the invalidity of the  
14 moratorium laws, fiscal plans and budget.

15           But interestingly now, the Amended Report kind of  
16 changes things from where we were in January. In January, we  
17 were before Your Honor in an Omnibus, and we spent hours  
18 before then and several hours here discussing and negotiating  
19 complex schedules. And these efforts resulted in interim  
20 orders by this Court, setting important gating issues on a  
21 proper course for adjudication, and that was through the lift  
22 stay motions.

23           But the Amended Report now injects this additional  
24 expedited, and we think duplicative, summary judgment  
25 proceeding, which fundamentally up-ends what we did in

1 January. And we think, and we submit to Your Honor, that  
2 doing so is unworkable and fundamentally inconsistent with  
3 what we decided together to work on in January.

4 So essentially, with respect to the adversary  
5 proceedings, the 305 issue still looms. That's going to have  
6 to be decided. There's going to be motion practice on that.  
7 And under this summary judgment proposal, even with the  
8 potential March 27 date that's now been suggested,  
9 essentially while we're dealing with the lift stay motions,  
10 and while we're filing our replies on the lift stay motions --  
11 and by the way, there is not just one lift stay motion. There  
12 are several lift stay motions dealing with CCDA, PRIFA and  
13 HTA.

14 So those are going to be due on the 26th. There are  
15 going to be cross-motions on the 27th under this proposed  
16 schedule. And by the way, if we stick with this additional  
17 summary judgment process, you know, we're going to be in a  
18 position where we have to do answers, counterclaims,  
19 affirmative defenses. I mean, if you're talking about  
20 summary judgment motions in an adversary proceeding, we're  
21 going to have to raise the issues that we have to raise by the  
22 27th.

23 So if the purpose here is to look at gating issues  
24 and to get some guidance from this Court -- and we agree with  
25 Judge Houser, that we hope to have some guidance from Your

1 Honor, but if that is the purpose, then the purpose is best  
2 served by focusing our efforts and focusing our resources on  
3 the lift stay motions and the issues that will be presented to  
4 Your Honor.

5 And we had a process in place. Your Honor said we  
6 would move forward, that Your Honor would consider moving  
7 forward with potential certification. After that, you would  
8 consider it. That was the process in place.

9 So from our perspective, not only do you have the  
10 26th and the 27th, the two dates we talked about, but at the  
11 same time, the revenue bondholders and counsel are going to  
12 have to be preparing objections to a disclosure statement  
13 hearing that's supposed to be held, and those objections are  
14 going to be due, you know, several weeks after that as well.  
15 So, you know, it seems to us that this entire summary judgment  
16 process in the adversaries, you know, would be a process that  
17 would be better served if we stayed them, not just staying the  
18 motions to dismiss.

19 I mean, it's kind of unfortunate, Your Honor, that  
20 here we were. We set a schedule that said file your motions  
21 to dismiss or your answers, which we did, and we spent a lot  
22 of time on them. Those are significant motions to dismiss.  
23 And again, not just a single one, you know. Four motions:  
24 Two relating to HTA, because you had one by the Commonwealth  
25 as well, one for CCDA and one for PRIFA. And that's that.

1 Let's just stay them. Let's forget it. Well, what happened  
2 to all that work?

3 But, you know, if we stay both the Summary Judgment,  
4 and we stay both the Motion to Dismiss, and stay the  
5 adversaries, and we can focus on the Lift Stay, that would be  
6 a better use of the resources and --

7 THE COURT: And so I'm assuming that you disagree  
8 that the particular issues already asserted in claims in the  
9 adversary that the mediation team has identified are key  
10 gating issues that don't require further pleadings to cue up  
11 and would be appropriate to look at in the near term?

12 MR. NATBONY: Well, I think several points on that,  
13 Your Honor. If you look at the issues that were identified in  
14 the mediation report, there is significant overlap between  
15 those issues and the issues that would be presented in the  
16 Lift Stay Motion. But we also think -- so to that extent, we  
17 think the real gating issues are in the Lift Stay. Plus, I  
18 would agree with what Mr. Ellenberg said with respect to  
19 moving forward with the other gating issues, for instance, on  
20 April 30th.

21 But that aside, not only is there substantial overlap  
22 between the issues that we talked about, but there are other  
23 issues there which are not particular issues that have -- that  
24 are strictly legal issues. I mean, if the point here is to  
25 have this other summary judgment proceeding that's going to



1 result in some quick resolution of other issues, it's just not  
2 going to happen. You've got the 305 issue. You've got, you  
3 know, significant issues. And Mr. Berezin will talk briefly  
4 in a few minutes about all of the material issues of fact that  
5 exist in some of the other issues.

6           You're going to have a Rule 56(d) motion, you know,  
7 for discovery. It's just not going to happen fast. And it's  
8 going to happen in the context of us raising affirmative  
9 defenses and us raising counterclaims, you know, in a context  
10 that unfortunately, I think, is detrimental to the ultimate  
11 goal here. The ultimate goal here was to get some gating  
12 issues, get some guidance from the Court, you know, and help  
13 the parties in that respect.

14           So the schedule again, as I said, is really not one  
15 that is workable. We think that there is really no need to  
16 essentially jam the parties here with a schedule that is not  
17 workable. When -- I agree here with what Mr. Despins said.  
18 If you think about it, whatever urgency that exists here all  
19 of a sudden is really the result of various stays and other  
20 delays that the Oversight Board and the mediation team  
21 themselves have requested and come to Your Honor with. And  
22 now, all of a sudden, the time's changed. The time is now to  
23 rush, rush, rush, rush, rush. Stop.

24           So from our perspective, what we see is stop and stay  
25 and think about it. And let's have discussions, and let's

1 move forward. There's reason to stay. And now all of a  
2 sudden it's rush, rush, rush. Well, we just don't see the  
3 basis, especially in light of the problems that exist with the  
4 Plan, which even begin with the government's opposition to it.

5           The other issue that I just wanted to point to Your  
6 Honor was that on the 926 issue and the deadlines that Judge  
7 Houser suggested, our position, as we've set forth in our  
8 papers, is there are legal and practical reasons why there  
9 shouldn't be any deadline. 926 sets no deadline on its face.  
10 And the Court, of course, does have power to control its  
11 docket and we recognize that. But a deadline that would  
12 permanently cut off the revenue bondholders' statutory right  
13 to seek appointment of a Section 926 trustee, or otherwise  
14 raise the conflict issue, we think would be detrimental to our  
15 due process rights.

16           THE COURT: Well, I will just say, so that everybody  
17 knows, to the extent I decide to impose deadlines and/or  
18 stays, the Court is willing, if not anxious, to entertain  
19 applications for relief from particular deadlines or stays on  
20 a showing of good cause.

21           MR. NATBONY: Thank you, Your Honor.

22           I would also just say that Judge -- and Judge Houser  
23 -- I appreciate Judge Houser's response to some of the  
24 objections that were filed, but certainly the suggestion that  
25 was raised of putting in dates that were either 15 days from,

1 it was the earlier -- sorry. What Judge Houser suggested --

2 THE COURT: The later --

3 MR. NATBONY: The later of two particular days is  
4 certainly a better option than what we have now in the Order,  
5 and that is appreciated from Judge Houser, but our position is  
6 there shouldn't be any deadline as well.

7 So unless the Court has further questions, those are  
8 my several points.

9 THE COURT: Thank you.

10 MR. NATBONY: Thank you so much, Your Honor.

11 THE COURT: Good afternoon.

12 MR. DUNNE: Good afternoon, Your Honor. For the  
13 record, Dennis Dunne from Millbank on behalf of Ambac  
14 Assurance Corp. I'm joined up here by my partner, Ms. Miller.

15 I'm going to yield at about three minutes. And by  
16 the way, I think Mr. Despina gave us an extra two minutes --

17 THE COURT: That's what he said.

18 MR. DUNNE: -- so we were up to 10. Hopefully it was  
19 accepted by the Court.

20 So let me kind of jump into it. I think that --

21 THE COURT: But you still have to speak slowly enough  
22 for the court reporter to get everything down and me to  
23 understand it.

24 MR. DUNNE: That -- you and I have talked about this  
25 clock and what it does to the velocity of my words.

1           But today is an important day in the case. I think  
2   that we're at an inflection point, and I bet you everybody in  
3   the courtroom agrees with that. But I'd say people disagree  
4   as to what happens next. On the one side, there is a group of  
5   parties that want to have a race to confirmation, even if that  
6   comes at a price of curtailed, limited or summary review of  
7   legal rights. The other side, this is the objecting side, is  
8   saying, finally some of the prior limitations on the review of  
9   legal issues have been removed, and the oft-promised complete  
10   airing of legal issues and production of documents will now  
11   occur.

12           The supporting group doesn't necessarily want to have  
13   that happen. Their primary goal, and you heard it, they were  
14   quite transparent about it, is speed at this point now that  
15   they have the deal. But the desire for that alacrity, Your  
16   Honor, can't be a cudgel. It can't impinge due process  
17   rights.

18           And I want to remind everybody that there have been  
19   times in the early parts of these cases, and in the middle  
20   parts of these cases, where we have attempted to adjudicate  
21   and get merit-based rulings on a bunch of issues that we're  
22   now going to have to deal with. The Oversight Board at that  
23   time, and Your Honor will remember, argued it wasn't ripe yet.  
24   And there's a certain logic to what they said, as that until  
25   they actually decided which legal assumptions to embed into a

1 plan of adjustment, that Your Honor's rulings would be  
2 declaratory judgments or advisory opinions and they weren't  
3 ripe yet.

4 Your Honor agreed in connection with our adversary  
5 proceeding with respect to the HTA lien and very clearly said  
6 that we'll come back and we'll hear that at confirmation. So  
7 we're saying that time is now. And it's certainly no time for  
8 a truncated review of the issues, and it's no time for any  
9 restrictions on discovery. It should be the time in the case  
10 when finally everything pertinent should be produced, we can  
11 carefully consider it and thoughtfully present it to the Court  
12 for adjudication.

13 There's been some comment today about the changes and  
14 improvements between the September Plan and the Plan that was  
15 filed last Friday. I just want to spend two minutes on that.

16 When you take a look at it, it becomes clear what  
17 happened, that it's the maxim in bankruptcy negotiations. If  
18 you're not in the room when parties are brewing up the  
19 settlements, it's going to be a bitter quaff that you see  
20 they've brewed. Is that -- the additional value from  
21 September to now, flowing to the 2012 GO holders is 860  
22 million. The additional Plan value to the 2014 holders is 1.3  
23 billion. The OID, which was referenced, means an additional  
24 150 million net value to the 2014s.

25 And I haven't gotten to the hundreds of millions of

1 | dollars of the PSA and consummation fees. But the total  
2 | give-up in additional value is somewhere between 2.7 billion  
3 | and 3.2, depending on when we go effective.

4 |         The clock has already started to run on the accretion  
5 | of interest on the GOs and the junior COFINAs, because we're  
6 | past March 1. What's the point here?

7 |         Make no mistake about it, Your Honor, this Plan was  
8 | crafted by and for GO holders, with the principal support  
9 | coming today, surprise, surprise, from GO holders. As part of  
10 | that negotiation, when they're principally the only ones in  
11 | the room, they also decided to sweep virtually all of the debt  
12 | capacity in the Fiscal Plan. With that, it left no room for  
13 | meaningful engagement with others, and the Plan,  
14 | unsurprisingly, doesn't seek to settle out the property right  
15 | litigation with respect to the clawback bonds. It seeks to  
16 | zero it out. And I guess at some level, that's everybody's  
17 | right.

18 |         As Your Honor has said, we'll deal with those issues  
19 | at confirmation, and we'll have our objections to it. But  
20 | what it doesn't justify, this agreement and this new plan, is  
21 | a race to the exit or the setting of dates. And I'll use the  
22 | much discussed June 3rd Disclosure Statement hearing, to the  
23 | extent that's used to abridge notice, timing or due process.

24 |         From Ambac's perspective, we want to work with a  
25 | schedule that actually makes sense and we can get behind. And

1 we did the prior schedule. And you've heard that from other  
2 counsel, but if there is going to be something that has to  
3 give, it's the June 3rd date. If we can't actually get there  
4 where we have a full and fair opportunity to be heard, it's  
5 that date, which was artificially set, designed to build  
6 pressure, some coal in the engine of the confirmation express,  
7 to build on the metaphor, but it can't be our due process  
8 rights.

9           One last point, Your Honor, before I turn it over to  
10 Ms. Miller, which is the GO priority. You've heard  
11 Mr. Kirpalani refer to us as junior creditors with respect to  
12 our clawback exposures. This is a foundational assumption in  
13 the Plan, and we don't obviously contest the existence of a  
14 priority for the GOs so much as the scope and the permanence  
15 of that priority.

16           And we're in a case, Your Honor, where the OB has  
17 very narrowly construed various rights and entitlements under  
18 state law. Your Honor has correctly and appropriately put  
19 parties to the test to show in detail the precise language in  
20 contracts and legislation that supports it. So to us, it's  
21 surprising to see the complete absence of the scrutiny with  
22 respect to the GO priority.

23           What do I mean by that? We all know that there was  
24 an annual budgetary priority. In a year where you start with  
25 a balanced budget and there was a shortfall on collections for

1 | those amounts that were not paid in that year, you have a  
2 | priority. What it is not, and we all know how to write these  
3 | things, is a perpetual priority. It's not a subordination.

4 |         The legislature could have drafted a priority over  
5 | all callback debt post default. It did not. The Court should  
6 | be very wary of trying to rewrite that bargain now. But the  
7 | POA does precisely that, it expands and solidifies that  
8 | year-to-year priority, renders it permanent, and the  
9 | equivalent to a contractual subordination provision, which it  
10 | is not. And we need to hear this, and we need to have a full  
11 | adjudication of it.

12 |         It's also not a settlement, Your Honor. What they're  
13 | trying to do here is to say, maybe Mr. Dunne has a point, but  
14 | let's adjudicate it within the range of reasonableness. And I  
15 | say that for two reasons, one of which you've already heard,  
16 | which is that to the extent we're talking about the  
17 | classification structure that's the scaffolding of a plan,  
18 | with various priorities, et cetera, that classification scheme  
19 | needs to be lawful.

20 |         And everybody can come in to Your Honor and say, I  
21 | think it's not lawful because that priority simply does not  
22 | exist under the law. The other is, it's simply not a  
23 | settlement.

24 |         When Mr. Kirpalani says the junior creditors over  
25 | there are going to complain about this, if this were truly a



1 settlement, you'd have a settlement of that priority where  
2 they're saying, well, we're only taking 75 cents. We could  
3 have got a hundred cents. That other 25 cents would go to the  
4 junior class.

5           Instead, what happened is they said there's only so  
6 much in the till, Your Honor. There's only so much in the  
7 current Fiscal Plan. We'll take all of it. And you know  
8 what's helpful for us in front of Judge Swain is we'll call  
9 that a settlement. That way, we will never get to the  
10 underpinning legal propriety of the priority.

11           And with that, Your Honor, I'll yield to Ms. Miller.

12           THE COURT: Thank you, Mr. Dunne.

13           Good morning, Ms. Miller.

14           MS. MILLER: Good afternoon, Your Honor. Atara  
15 Miller from Millbank on behalf of Ambac Assurance Corporation.

16           So I have the unusual privilege for myself to just  
17 get to brass tacks and to allow others to frame the issues.  
18 And I think you'll be sympathetic to our cringing in the back  
19 to the suggestion that we're trying to delay adjudication or  
20 resolution of issues. We've been trying to have them  
21 adjudicated for four plus years at this point.

22           But what I think is critical is imposing a schedule  
23 that actually works. And there was some reference to it, but  
24 I want to put in context or be really specific about what the  
25 Court is going to order on the parties right now. And I want

1 to make clear that we're talking, when we talk about the lift  
2 stays, and Mr. Natbony mentioned this, that we're talking  
3 about three Lift Stay Motions. When we talk about the  
4 adversary proceedings, motions to dismiss, or summary  
5 judgments, we're talking about four separate Summary Judgment  
6 Motions, or four separate adversary proceedings, each of which  
7 the Complaint counts into the hundreds of pages, with hundreds  
8 of counts as well.

9 The suggestion -- and I want to go back to the  
10 original motion to dismiss schedule and the briefing that was  
11 pretty hard fought and negotiated in mediation, which is the  
12 current motion to dismiss schedule. And that was something  
13 that, based on the experience of the parties and our strong  
14 desire to coordinate and avoid duplicate briefing and to have  
15 all of the monoline parties aligned submitting a single brief,  
16 which I think we've done pretty efficiently and effectively  
17 for the Court to date, that that requires a significant amount  
18 of coordination. And the motion to dismiss schedule, which  
19 had opening briefs on February 27, opposition on April 13, and  
20 reply briefs on May 13, was the reflection of what the parties  
21 thought we could reasonably do.

22 The summary judgment proposal truncated those  
23 periods, in addition to just layering them on top of the  
24 existing Lift Stay and motions to dismiss, and now Disclosure  
25 Statement briefing, which also is all running in parallel.

1 It's now truncating those periods by about two and a half  
2 weeks and then eight days.

3 And that truncating of the briefing period has not  
4 changed with the shifting of the dates that Judge Houser  
5 suggested at the beginning. And I will tell you that, based  
6 on the last two months of work, it is not practical, and the  
7 product that this Court is going to see is going to reflect  
8 that.

9 I also want to make clear, Mr. Natbony mentioned that  
10 if there are going to be summary judgments, and there's going  
11 to be true cross-motions where that is a meaningful right, the  
12 monolines have to be given an opportunity to put in answers,  
13 counterclaims, affirmative defenses. We believe that if there  
14 is going to be summary judgment, there are critical issues in  
15 addition to the eight that have been identified that need to  
16 be addressed.

17 Mr. Dunne referenced one of them, which is the  
18 clawback rights and what that means. And another one would be  
19 whether PROMESA is constitutional under the Uniform Bankruptcy  
20 Clause. We think that those are critical issues that really  
21 should be teed up. And if there's going to be summary  
22 judgment, we'd like to present those in an answer with  
23 counterclaims and move on that as well.

24 The last issue, just very briefly, in terms of the  
25 scope of the stay, we would join Assured and the UCC in the

1 suggestion that the objection to a broad blanket stay, we  
2 think that that's procedurally improper. We think you should  
3 stay issues that are before you. And to the extent that  
4 parties file things and there is a request or suggestion that  
5 it should be stayed or a belief that it should be, there can  
6 be a motion to stay. And the Court should consider that in  
7 due process, rather than as -- the current proposed order  
8 would have a blanket stay, not just until confirmation, but  
9 actually through confirmation.

10 So as written, issues like classification, for  
11 example, can't even be litigated at the confirmation stage.  
12 And I'm not exactly sure how that works.

13 THE COURT: My understanding, and I was going to say  
14 for what it's worth, but I guess since I'm sitting here, it's  
15 worth a lot. My understanding is that the intent is not to  
16 preclude confirmation-related litigation, but rather to  
17 channel litigation on those issues into the confirmation  
18 contested matter mode to the maximum extent possible, as  
19 opposed to having things pop up in different adversaries and  
20 contested matters all over the place.

21 So I'm reading it and would, if I put it in place,  
22 administer it as a channeling mechanism, as opposed to a  
23 preclusion mechanism for issues that truly are pertinent to  
24 confirmation or Disclosure Statement approval.

25 MS. MILLER: So then I would suggest that the

1 language, I think in paragraph 5 of the Proposed Order, be  
2 changed, because I think that it said --

3 THE COURT: I was intending to.

4 MS. MILLER: Okay. Because it says anything in the  
5 settlement can't be litigated until after confirmation.

6 In addition to that, the last thing I want to touch  
7 on, which nobody's mentioned, but one of the stayed issues or  
8 one of the stayed motions right now is the PRIFA 2004  
9 Discovery Motion. And you'll recall that that was up for  
10 hearing in June, along with the original PRIFA Stay Motion.

11 And there was debate between myself and  
12 Mr. Bienenstock about whether that could go forward if we were  
13 putting this substantive stay motion into -- the Lift Stay  
14 Motion into mediation. And at the end, we agreed that we  
15 would put them -- put it all into mediation.

16 That discovery motion, however, is not strictly  
17 related to Lift Stay related discovery. They were two  
18 separate issues. There is some degree of overlap, but, first  
19 of all, as Your Honor is well aware, the discovery that has  
20 been granted in connection with the Stay Motion is limited  
21 discovery specifically related to secured status and flow of  
22 funds.

23 THE COURT: May I interrupt you?

24 MS. MILLER: Sure.

25 THE COURT: I understand that, and again, I offer

1 this for the purpose of expediency and transparency, in that  
2 the Lift Stay Motion practice is front ending the question of  
3 whether this set of creditors of PRIFA have an interest in  
4 these particular streams of revenue or can assert claims on  
5 behalf of PRIFA. It seems to me that 2004 discovery is in a  
6 different context, depending on whether there is that standing  
7 and whether there is an interest in that particular revenue  
8 stream or not.

9           And so if there were a determination that this  
10 constituency were not secured, didn't have a special priority  
11 equitable interest, there are lots of issues to be litigated  
12 there, and I don't know how they're going to come out. But if  
13 they were to come out putting the bondholders' constituency in  
14 the same place as general unsecured creditors, the Court is  
15 justified in looking at a very extensive, very granular  
16 request for information as to a particular aspect of the  
17 Commonwealth's finances, perhaps through a somewhat different  
18 lens or template than if those same granular questions were  
19 being asked by someone who has a particular claim on those --  
20 on those revenues.

21           And so it seems to me, at this point, logical in the  
22 context of the early queuing up of issues in the Lift Stay, to  
23 put the PRIFA 2004 into the more general confirmation context  
24 in a structure that assumes there will be some answers on the  
25 security interest and standing questions before confirmation

1 discovery opens up.

2 MS. MILLER: So I would say two quick things, but I'm  
3 not sure that I necessarily disagree, because I think what  
4 you're saying is proposing not to stay it through to  
5 confirmation --

6 THE COURT: No.

7 MS. MILLER: -- but to stay it for the next month or  
8 so --

9 THE COURT: To stay it until confirmation --

10 MR. MILLER: -- until the discovery starts, which  
11 would be, I think in June.

12 THE COURT: Yes.

13 MS. MILLER: I mean, our position on that, just to be  
14 clear, is that it's information much like the other 2004  
15 motions that we filed, which go to the general ability to pay  
16 of the Commonwealth, were also general obligation, as well as  
17 PBA creditors. And in that regard, it is specific in that it  
18 is addressing particular payments, but it is hundreds of  
19 millions of dollars a year that are paid. And so it's not  
20 sort of a small going after the copy expenses. It is a really  
21 big line item that we think is directly relevant to the  
22 issues.

23 But if what you're saying is we'll get it in  
24 confirmation-related discovery --

25 THE COURT: Yes, that's what I would see it coming in

1 --

2 MS. MILLER: -- we don't have a strong objection to  
3 that. Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 So, National. Is anyone speaking for National? I  
6 have eight minutes down for National.

7 MR. BEREZIN: It's me.

8 THE COURT: Oh, I'm so sorry.

9 MR. BEREZIN: Your Honor, Robert Berezin, Weil,  
10 Gotshal & Manges, for National Public Finance Guarantee  
11 Corporation.

12 THE COURT: Yes.

13 MR. BEREZIN: Your Honor, I'd like to start with  
14 National's objection to adding early summary judgment motion  
15 practice to the existing Revenue Bond Scheduling Order. The  
16 purported basis for allowing for early summary judgment  
17 motions is that they will result in multiple merits rulings  
18 and do so in a matter of weeks. In our view, they won't.

19 Our early summary judgment motions will result in  
20 significant upheaval. They will impose substantial burdens on  
21 the Court and the parties, but they won't resolve important  
22 gating issues, certainly not on the time scales that have been  
23 proposed.

24 The main issue that I want to focus on, Your Honor,  
25 is the issues of fact. So as the Court knows, I think the



1 record at this point before the Court is that there's been no  
2 showing at all that summary judgment motions, before motions  
3 to dismiss have been decided, before answers have been filed,  
4 before counterclaims, and before any discovery, makes any  
5 sense at all and will work. And, in fact, the record shows  
6 quite the opposite.

7           Many of the counts, the eight counts that are slated  
8 for early summary judgment, implicate factual issues that will  
9 require, consistent with due process, discovery. So, for  
10 example, many of the counts implicate the question of whether  
11 the clawback of excise taxes over the last four or five fiscal  
12 years was proper under Commonwealth law. That will  
13 necessitate a factual investigation for each fiscal year that  
14 the excise taxes were withheld properly under Commonwealth  
15 law. What were the available resources? What were the  
16 appropriations?

17           Other counts indicate that the Board will be moving  
18 on summary judgment as to whether the Commonwealth exercised  
19 an alleged police power in withholding the excise taxes to  
20 provide essential services. Well, so the questions there  
21 include: What are the essential services? How much did they  
22 cost? Was it essential and necessary to withhold the excise  
23 taxes? And were they used, in fact, to satisfy essential  
24 services or something else?

25           These are intensely factual questions, and they arise

1 in several of the counts. Several of the counts involve  
2 claims under the Contracts Clause, seeking to disallow a  
3 bondholder claims under the Contracts Clause, raising  
4 questions of were the impairments substantial and were they  
5 reasonable and necessary? Reasonable and necessary obviously  
6 goes into very factual questions.

7 What, again, related to the -- what were the excise  
8 taxes used for? Were there no other alternatives? Were  
9 they -- what was the level of essential services? Et cetera.  
10 These are not legal issues, purely legal issues at all. Yet,  
11 they are slated for summary judgment.

12 So the list goes on in terms of the property interest  
13 issues and secured status issues, though the refrain that the  
14 Court has heard for months is that it's all purely legal.  
15 There are absolutely no factual components. The Court has  
16 already decided that's not so. You've granted limited  
17 discovery already. And those documents are showing that many  
18 of the Board's arguments, legal arguments, untested arguments,  
19 are completely inconsistent with the facts on the ground.

20 And we know -- we need to know which accounts were  
21 involved. You know, which -- which accounts held excise  
22 taxes. Were those accounts held for the benefit of HTA or  
23 not? What were the -- how were those accounts handled?

24 There are several factual issues there, not  
25 withstanding the arguments that the Court has heard, and that

1 requires discovery. The Lift Stay discovery ordered so far is  
2 not necessarily a substitute that can then be used in the  
3 adversary proceedings.

4 So one example, Your Honor, is in the adversary  
5 proceedings under property interest. The Board contends -- in  
6 one of the counts that is slated for summary judgment, the  
7 Board contends that even if the monolines have a property  
8 interest, it was subject to clawback and there was a valid  
9 clawback. Well, that's an intensely factual issue.

10 So at the same time, the First Circuit's rules here  
11 are crystal clear, that if you've got an early summary  
12 judgment motion before answers are filed, the standard to  
13 identify a genuine and material issue is low. It's not a  
14 challenging standard to meet.

15 And so the record before the Court shows that summary  
16 judgment motions won't lead to a quick merits ruling, and,  
17 therefore, the suggestion that they be adopted makes little  
18 sense. It's not going to help. It's going to make things  
19 incredibly complicated for everyone and not lead to  
20 resolutions. Far better to focus on the pending Lift Stay  
21 Motions.

22 If the Court were inclined, however, to proceed with  
23 summary judgment, the issue of deadlines that Ms. Miller just  
24 articulated can't be understated. Aside from the fact that we  
25 are talking about, when you layer all of the deadlines on top

1 of each other, by my count, 11 filings in less than 13 weeks,  
2 four or five hearings in less than 13 weeks, before the June  
3 3rd date, that doesn't even consider the virtual inevitability  
4 that discovery will be required.

5           There is no way that these motions can be heard and  
6 decided by this Court, consistent with due process and  
7 rational scheduling, in time for this June 3rd arbitrary date.  
8 So, Your Honor, we would urge the Court, if it is inclined to  
9 proceed with summary judgment, to absolutely disregard the  
10 notion of the schedule being held hostage to this June 3rd  
11 date.

12           Your Honor, we also join the remarks of others, and I  
13 won't repeat them, that the deadline for the 926 motion is  
14 inappropriate and an extremely difficult deadline to meet in  
15 light of the other issues that are pending, as well as the  
16 stay -- the blanket stay of the GO-PBA issues.

17           I'd just like to close, Your Honor, with a remark  
18 regarding Judge Houser's comments. National did not  
19 understand that this Court's Orders that authorized the  
20 mediation sessions permitted the exclusion of some creditors.  
21 National objects to that and objects to the process of  
22 exclusion that has occurred.

23           National was one of the parties that was excluded.  
24 We were very disappointed to be excluded, and repeatedly asked  
25 to join the negotiations. Nor did National demand global

1 resolution of its cross holdings, for example, in HTA.

2 But, Your Honor, on a more positive note, we hope to  
3 join the mediation process. We hope that we're permitted to  
4 join the mediation process. We don't think any party,  
5 particularly a party holding such substantial claims, should  
6 be excluded.

7 Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Berezin.

9 Invesco. All right. Sorry for the delay. Good  
10 afternoon.

11 MS. BYOWITZ: Not at all. Good afternoon, Your  
12 Honor. Alice Byowitz on behalf of certain funds managed by  
13 Invesco Advisers and OFI Global Institutional, Inc.

14 The Invesco funds joined the objection and  
15 reservation of rights that was filed by the monolines  
16 regarding the Disclosure Statement schedule. That objection  
17 was filed before the Oversight Board filed its Proposed Plan  
18 of Adjustment. Invesco has now seen and begun its review of  
19 the Plan, and it reiterates its objections to the schedule.

20 The Invesco funds are mutual funds that invest in  
21 municipal bonds for individual investors across the United  
22 States. They've been partnering with Puerto Rico to finance  
23 infrastructure across the island for more than 35 years, and  
24 they are committed to Puerto Rico's long-term interest and  
25 hope to see the island prosper in the future.

1           The Invesco funds and other mutual funds like it that  
2     have invested all across Puerto Rico's capital structure in  
3     the GOs, in PBA, in HTA, in PRIFA, for decades have done so  
4     because those bonds were valid on the dates that they were  
5     issued, those bonds remain valid to this day, and those bonds  
6     are entitled to be paid from the revenue sources pledged to  
7     their payment.

8           The Oversight Board's Plan of Adjustment rewards  
9     meritless litigation claims against these valid, longstanding  
10    financing structures, ignoring the plain language of the  
11    Puerto Rico Constitution and the pledges of collateral to  
12    secure different bonds.

13          Other parties have already addressed a number of the  
14    flaws with the Proposed Plan, and I won't repeat them here. I  
15    will just add that among its other flaws, the Plan would  
16    impose steep losses on constitutionally backed bonds. And  
17    yet, as you've already heard, the Board refuses to describe  
18    the essential services that are being paid ahead of these  
19    bonds and relies on projections that have consistently  
20    underestimated Puerto Rico's performance, to the detriment of  
21    bondholders.

22          Mr. Kirpalani said junior creditors are seeking to  
23    delay and defer. Mr. Ellenberg already addressed the junior  
24    points, so I won't belabor it here. On delay, I will just say  
25    that that's not our aim. Instead, we seek a reasonable

1 schedule that allows parties a real opportunity to vindicate  
2 their rights.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Ms. Byowitz.

5 FGIC, Mr. Sosland.

6 MR. SOSLAND: Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. SOSLAND: Martin Sosland on behalf of FGIC.

9 We join in the comments of our brothers and sisters  
10 similarly situated. And I won't repeat their arguments. I  
11 would like to punctuate a couple, and also respond simply to  
12 one of the points that Judge Houser made.

13 She made the point that the objecting creditors and  
14 those of us asserting our lien rights in respect to the  
15 revenue bonds shouldn't be allowed to hold up confirmation.  
16 And if that was a characterization of what we're doing, we  
17 simply don't think it's fair.

18 And I would remind the Court, on May 20th -- on May  
19 20th, 2019, so ten months ago, the Oversight Board filed  
20 adversary proceedings in an attempt to beat the avoidance  
21 action statute of limitations in the case of HTA. And one in  
22 particular, it's 19-363, FGIC and the other monolines are  
23 defendants.

24 And FGIC promptly answered and filed counterclaims in  
25 that adversary proceeding. We did that on June 11, 2019. So

1 just barely three weeks after the Complaint was filed. And  
2 the next day, in response to a motion that the Oversight Board  
3 had filed seeking to stay that adversary proceeding, which we  
4 opposed that it -- the Court entered, at that point, a brief  
5 stay.

6 And we told the Court at that time that these were  
7 gating issues that needed to be determined before we moved  
8 forward with the disclosure statement and plan; that they were  
9 equally important to the issues that were determined, the  
10 ownership issues determined in connection with COFINA; and  
11 that they should go forward. And then six weeks after that,  
12 on July 24th, of course, the Court entered its Order staying  
13 that adversary proceeding and all of the litigation in these  
14 cases until barely a month ago basically.

15 But we have not been the holdup, because we wanted to  
16 go forward with that litigation in the first place. And I  
17 think characterizing us as attempting to have these gating  
18 issues litigated in advance of confirmation of a plan is not a  
19 holdup, but just seeking our due process and substantive  
20 rights that they be litigated.

21 We would join in the comments, as I said, that the  
22 other monoline counsel made. And I want to particularly  
23 emphasize the completeness and some of the remarks of  
24 Ms. Miller, that if we're going to go forward on a summary  
25 judgment schedule, and for the reasons that Mr. Berezin and



1 others have pointed out, we think the stay relief motions are  
2 more appropriate.

3           Before going forward, we should not be limited to the  
4 issues that are stated in the -- that should be stated -- that  
5 are put forth in the mediators' report. We should be able to  
6 fully answer and move for summary judgment on whatever issues  
7 that we think are appropriate. And those cross motions should  
8 go forward on whatever the schedule is that fits. We'll meet  
9 the schedule, but we should not be -- we should not have our  
10 substantive rights limited by what issues can be put before  
11 the Court in that context.

12           And finally, I just want to mention one item as it  
13 relates to confirmation. As I think the Court is aware, in  
14 these adversary proceedings, the Oversight Board has been  
15 arguing, among other things, that we don't have the priorities  
16 and liens that you've heard from other counsel that we have  
17 and that we've been putting before the Court, including in the  
18 stay motions. And we don't have them, among other reasons,  
19 because our rights are preempted by PROMESA. We don't think  
20 that that is right, and we don't think the Plan is confirmable  
21 if it takes away our rights based on preemption. But if it's  
22 right and if we're wrong, then preemption applies to all of  
23 the preexisting claims.

24           And then there's a problem with this so-called  
25 settlement with the GO holders, because you're going to have a

1 problem under 1129, because that would be unfair  
2 discrimination if our rights are preempted and their preempted  
3 rights are somehow getting 75 cents or more on the dollar,  
4 where we're getting nothing.

5 Thank you.

6 THE COURT: Thank you.

7 And now I'll turn to Mr. Hein, who's been waiting  
8 patiently in New York for eight minutes.

9 Good afternoon, Mr. Hein.

10 MR. HEIN: Yes. Thank you, Your Honor.

11 I want to make several points, and otherwise rely on  
12 my previously filed papers. First, I continue to object to  
13 any stays of litigation related to validity, secured status or  
14 priority. My position is that rights of bondholders who have  
15 lawful priorities and liens cannot be compromised away through  
16 confidential mediation to produce a plan.

17 Second, the Commonwealth is not in a position to  
18 advance a plan of adjustment, because the Commonwealth has  
19 not issued audited financials for any period since June 30,  
20 2016. 48 U.S.C. 2146(a)(2) entitled, Oversight Board duties  
21 related to restructuring, provides that a requirement for a  
22 restructuring certification is that the Oversight Board,  
23 prior to issuing a restructuring certification, has  
24 determined, in this case that the Commonwealth, quote, has  
25 adopted procedures necessary to deliver timely audited

1 financial statements.

2 But the last financials that have been audited are  
3 through June 30th, 2016, which were issued almost three years  
4 late thereafter. It's now been over 970 days since the end of  
5 fiscal 2017. We still do not have audited financials for  
6 2017.

7 What's attached as Exhibit K to the draft disclosure  
8 statement is audited financials through June 30, 2016, almost  
9 four years old. And respectfully, I would submit that step  
10 one, before a draft disclosure statement is put out for  
11 comments on adequacy, should be to get audited financials  
12 issued, including for fiscal 2017, fiscal 2018, as well as  
13 through June 30, 2019, which is a period that ended over eight  
14 months ago.

15 Third, another flaw in the amended mediation report  
16 is its failure to address the topics identified in Your  
17 Honor's July 24, 2019, Order. That's at docket 8244. On page  
18 four, item 10(c), Your Honor said that mediation report could  
19 address whether and when the creation of a limited scope  
20 committee might be necessary or advisable to address issues  
21 unique to individual bondholders, such as the payment  
22 structure of replacement bonds. The Amended Report does not  
23 address the need for a committee to represent individual  
24 bondholders.

25 The proposed plan that came out of this mediation

1 includes 16 splinter bonds. And what this means is someone  
2 who had, as an individual retail investor even, say, a hundred  
3 thousand par, but there are some that might have had 10,000  
4 par, they get 16 splinters for every one existing bond.

5 This repeats a feature of the COFINA Plan that was  
6 devastating to individual investors, a loss of liquidity for  
7 the splinter bonds they received. Even worse, fractional  
8 splinter bonds being sold at fire sale prices, further  
9 depressing recoveries, to say nothing of having to address  
10 and account for these splinter bonds for tax purposes, and  
11 the potential for brokerage fees for exchange transactions  
12 on a splinter bond basis.

13 Splinter bonds might produce great trading  
14 opportunities for hedge funds, but they have a devastating  
15 impact on individuals for the reasons I mentioned.

16 Mr. Rosen's comments, I think, this morning highlight  
17 that retail investors who bought pre-PROMESA were left out of  
18 this process. Respectfully, confidential mediation's simply  
19 not an appropriate process for a case where billions of  
20 dollars were sold throughout the country, including to retail  
21 investors.

22 Mr. Rosen refers to the 50 billion dollar potential  
23 retail support fee for retail investors, but that provides  
24 only a pretense of equality. The fee is contingent on retail  
25 investors, who are segregated into separate retail classes,

1 having their classes vote yes. That is improperly coercive,  
2 particularly because the retail investors were not included in  
3 the mediation process that produced the plan terms.

4           There is also no data provided where one -- whereby  
5 one can conclude how that retail support fee, even if it did  
6 occur pro rata per holdings compares to what the institutional  
7 investors are getting. Puerto Rico has approximately nine  
8 billion in cash sitting today in its TSA account. And even --  
9 and that's even though spending has been largely unrestrained,  
10 taxes have been reduced since PROMESA's been adopted.

11           There is no legitimate case for foisting losses on  
12 bondholders, who under Puerto Rico's Constitution, were to be  
13 paid first before any other expenses. Yet, we have continued  
14 unrestrained spending, public relations, advertising  
15 consultants, you name it, reducing taxes, everything and  
16 anything but pay the bondholders who have their constitutional  
17 right priority.

18           The effect of the Plan is to reverse those  
19 constitutional priorities. Current employees under this Plan  
20 actually get cash bonuses. Retired employees are largely  
21 unaffected and may even benefit further if the Commonwealth  
22 achieves its projected surpluses, or if surpluses exceed their  
23 current lowball expectations. This is extraordinarily unfair  
24 to individual investors who bought years ago, long before  
25 PROMESA was even on the horizon.

1                   And one point that is not in my papers that I want  
2 to make responsive to the Retiree Committee filing, that's at  
3 docket 11121, the Retiree Committee says they plan to have a  
4 summary explaining to retirees how their retirement benefits  
5 will be treated, and they want that to be separate and apart  
6 from the Disclosure Statement. And I object to having  
7 anything separate and apart from the Disclosure Statement.

8                   Any summary of how retirees are treated should be  
9 enclosed in the disclosure statement that bondholders -- many  
10 of these individual bondholders themselves are retired, and  
11 they should be able to see the summary of how the Puerto  
12 Rico public employees, retirees, are being treated. The  
13 Oversight Board's gambit here is to reverse constitutional  
14 priorities. All bondholders are entitled to see what is  
15 going on.

16                  Finally, I would just note that there were  
17 additional aspects of Your Honor's July Order, docket 8244,  
18 not addressed. That includes item six on page four regarding  
19 anticipated gerrymandering challenges. The Plan, as I  
20 mentioned, even introduces new gerrymandering.

21                  Also, item seven on page four, identification and  
22 treatment of essential services. That's not been done despite  
23 four years after PROMESA.

24                  And finally, item eight on page four, treatment of  
25 claims based on alleged violations of Federal Constitution.

1 That is not addressed in the Mediation Report.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Hein.

4 Yes, sir.

5 MR. MINTZ: Hi. Doug Mintz, Your Honor, of Orrick,  
6 counsel to Cantor-Katz Collateral Monitor, LLC, for the DRA  
7 parties.

8 As you know, the DRA is the largest HTA creditor and  
9 owns hundreds of millions of dollars of claims against the  
10 Commonwealth and PBA, as well as a much larger portfolio of  
11 other claims. Despite the size and breadth of the DRA's  
12 holdings, everyone seems eager to erase the DRA from the case,  
13 including from negotiations in this process.

14 As others have said, we did ask to be part of  
15 negotiations, and offered a variety of different people, and  
16 were not included in that process. We did not refuse to  
17 negotiate. This erasure seems to be happening despite the  
18 fact that this Court, just a little more than a year ago,  
19 approved the Title VI in the GDB case that helped create the  
20 DRA, as well as legislation that helped create the DRA.

21 And so we've been put in place, our clients have been  
22 put in place, and we're here to push to preserve the interests  
23 of our clients, and will continue to do so. You'll hear a bit  
24 about our efforts to participate in and ultimately now to try  
25 and intervene in the revenue bond litigation to avoid

1 suffering prejudice.

2 Judge Dein, we appreciate the Order that she entered  
3 last night, that that dispute does continue in the context of  
4 the revenue bond litigation, and the adversaries as well, and  
5 those requests are pending.

6 But first, I did want to cover a few overarching  
7 points and try not to repeat too much of what other people  
8 have said. Mr. Kirpalani said parties are here trying to  
9 delay, but it's not about delay. It's clearly about due  
10 process.

11 We're not here to stand in the way of any proposed  
12 schedule. We're skeptical that the proposed schedule can get  
13 done on the timing that's been teed up. I'll leave the  
14 various dates that other people have addressed. I think  
15 you've heard it.

16 We echo a number of those thoughts. But there's a  
17 lot to cover in a relatively short period of time. We won't  
18 stand in the way. We'll push to cover those issue.

19 It does seem like part of the intent is to channel a  
20 lot toward confirmation. It looks like two weeks for  
21 confirmation may not be enough, but that's a conversation,  
22 perhaps, to reconsider. We know that there are disparate  
23 parties objecting to the proposal and the mediators' report,  
24 parties that often disagree. While on the other side is the  
25 Oversight Board and the Plan Support Agreement creditors who



1 adopt the mediators' position, and they really effusively  
2 adopt it, I should say.

3           We'd ask the Court to take a more measured approach  
4 to tee up issues for resolution before and during confirmation  
5 that need to be teed up, and do so in a coordinated, not  
6 piecemeal fashion, to avoid depriving various parties of their  
7 due process rights. One area in desperate need of global  
8 resolution, and Mr. Dunne touched on this, is the  
9 Commonwealth's diversion of revenue from HTA and other  
10 entities.

11           The mediator doesn't tee this up directly as a  
12 confirmation issue, but we think it's a fundamental assumption  
13 built into the Plan that all the free cash needs to go to  
14 service GO bonds first. This is an issue that the clawback  
15 complaint may cover in pieces, but the clawback complaint is  
16 teed up essentially as a claim objection dealing with specific  
17 claims. This is a fundamental assumption underlying the  
18 entire Plan.

19           The Oversight Board has offered and will offer  
20 multiple reasons why the diversion was proper, and the Court  
21 needs to address these in full, not in pieces. For example,  
22 as Your Honor is well aware, Article VI, Section 8 of the  
23 Commonwealth Constitution says, in the case available revenues  
24 for any fiscal year are insufficient to meet the  
25 appropriations made for that year, interest on public debt and

1 amortization shall be paid first.

2 At this time, I'm not aware of any evidence to  
3 support the notion that there were insufficient revenues in  
4 any fiscal year. Mr. Berezin touched on that as well. And  
5 this is really complicated stuff. It needs to be analyzed  
6 year by year, and revenue stream by revenue stream.

7 Each instrument talks about when their funds should  
8 be made available. This is an issue that will be key to  
9 confirmation. Whether it's a gating issue or confirmation  
10 issue, I can't say, but it is an issue that needs to be  
11 addressed broadly.

12 That's true even if the Oversight Board doesn't  
13 address that issue themselves, because the Plan needs to  
14 satisfy the best interest test under Section 314(b)(6) of  
15 PROMESA, which requires the creditors would not receive a  
16 greater recovery under Commonwealth law and the Commonwealth  
17 Constitution. These provisions are right out of Commonwealth  
18 law and the Constitution, and they need to be addressed.

19 There's also some suggestion, both in the mediators'  
20 report and comments we've heard today, that this could be  
21 settled, but other parties, particularly GO bondholders, are  
22 not the parties to settle that issue.

23 We cite a few cases in our briefs, including *Miami*  
24 *Metals* at 603 B.R. 531, which support the notion that you need  
25 to take close look at the nonsettling party's interest in the

1 settlement. And so to the extent that the revenue bondholders  
2 are not settling parties, you'd have to look at this issue  
3 very closely.

4 With respect to our concerns about the revenue bonds  
5 specifically, as I alluded to at the outset, we've got a  
6 common interest in certain excise tax revenue streams. Those  
7 revenue streams are the subject of the monolines Lift Stay,  
8 the DRA's Lift Stay, as well as the adversary proceedings in  
9 the HTA case. And we've sought to participate and ultimately  
10 to intervene in those cases.

11 As I noted, Judge Dein addressed the issue with  
12 respect to the Lift Stay, which we're grateful for. There are  
13 a number of overlapping issues in all of these proceedings.  
14 And these issues, as I said, can't be addressed piecemeal.

15 The current Revenue Bond Scheduling Order that's  
16 before the Court would address a number of these piecemeal and  
17 deprive the DRA parties of certain due process rights. Again,  
18 that's being rectified, and we've filed motions to intervene  
19 in the adversary proceeding. They are before the Court,  
20 although they're not pending today. And we would ask that the  
21 Court address those in due order.

22 We may submit a further notice seeking to schedule  
23 them in as short a time as possible.

24 THE COURT: Well, my understanding is that Judge Dein  
25 is well aware of them and intends to address them.

1                   MR. MINTZ: Yes. We understand that and appreciate  
2 that, Your Honor.

3                   Briefly, a couple of other issues. With respect to  
4 the trustee issue for HTA or other appropriate relief, we  
5 agree that that's an important gating issue. It is something  
6 that again should be addressed on a broad basis, not among  
7 limited parties. It's a little bit unclear in the proposed  
8 Revenue Bond Order, but we'd obviously expect to be a  
9 participant in that process.

10                  We echo other folks' thoughts on the blanket stay,  
11 and I won't offer anything additional there.

12                  And just to respond to Mr. Despins' comment about the  
13 UCC's claim objection, while it may not be a showstopper with  
14 broad -- it is a very important issue for our clients who  
15 would like to resolve that objection very quickly. We think  
16 the objection lacks any merit whatsoever.

17                  I won't go into the complicated legal issues here,  
18 but we allude to them in our briefing, and we believe it's  
19 important to address that very quickly for our clients'  
20 benefit. So, in the end, we believe the current proposal can  
21 be prejudicial and piecemeal and turns a blind eye to some of  
22 the big issues in this case.

23                  We want to ensure that the Court has every  
24 opportunity to address those big issues, and we'll obviously  
25 work hard to be a part of that as needed.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Mintz.

3 Mr. Mudd, did you wish to be heard? Good afternoon.

4 MR. MUDD: Good afternoon. Thank you, Your Honor.

5 John Mudd for Salud Integral en la Montaña.

6 Your Honor, we filed a motion objecting to the  
7 timetable of the Disclosure Statement. I would like to quote  
8 a local saying attributed to Napoleon. It basically says,  
9 dress me slowly for I am in a hurry. And that's something we  
10 have to consider here.

11 First of all, we have a disclosure statement that has  
12 1,967 pages. True, some of those documents have been filed  
13 before, but have they been analyzed in terms of the disclosure  
14 statement? Not necessarily. That's one problem.

15 Second, we have the Ambac discovery. There have been  
16 two reports already, and the government of Puerto Rico has  
17 said that it will produce documents, but they need time.  
18 Fine. No problem. But those documents will likely be very  
19 important for the Disclosure Statement and the Plan of  
20 Adjustment. So if we don't have them, how can we object to  
21 the Disclosure Statement?

22 Third, the Board has said that it will certify the  
23 fiscal -- the new Fiscal Plan by April 30th. We have to file  
24 objections by the 17th of April. Now, if the fiscal -- if the  
25 Plan of Adjustment is supposed to be based on the Fiscal Plan

1 and they have to be consistent, I'm sorry, then how can we do  
2 that? That's kind of difficult.

3 Fourth, the Board has not explained how it's going to  
4 override, shall we say, or come to an agreement with the  
5 government. And here we have to divide the government. The  
6 Board may have been discussing and speaking with AAFAF, which  
7 is the executive. Fine. No problem.

8 But what about the legislature? The legislature has  
9 said without any doubt that they will not approve -- there's  
10 even a resolution that they will not approve this. So we have  
11 that fourth problem.

12 The fifth, and I echo Mr. Hein's objections, we don't  
13 have financial statements, audited financial statements. And  
14 if we don't have them, how do we know all the information is  
15 correct -- or reliable? Not correct. Reliable. And that  
16 will be our point, Your Honor.

17 Thank you.

18 THE COURT: Thank you.

19 Does anyone else want to be heard before I call on  
20 the Oversight -- yes.

21 MR. ROTGER SABAT: Good afternoon, Your Honor.

22 THE COURT: Good afternoon.

23 MR. ROTGER SABAT: My name is Angel Rotger. I am  
24 counsel, local counsel for defendant Morgan Stanley in the  
25 adversary proceeding 19-280. With me today is sister counsel,

1 Nilda Navarro Cabrer. She's also counsel for Jefferies and BP  
2 Capital Markets -- I mean, pardon me, BMO Capital Markets. We  
3 also appear, Your Honor, on behalf -- strictly for the  
4 purposes of joint docket 11242, the joint statement for the  
5 defendants there identified in footnote number two.

6 Simply put, Your Honor, our adversary proceeding has  
7 been referred to as the underwriter litigation.

8 THE COURT: Yes.

9 MR. ROTGER SABAT: Our opposition to the Amended  
10 Report and Recommendation submitted by the mediation team  
11 simply limits to oppose any extension of the stay to the  
12 motion practice discovery in our litigation.

13 Your Honor, as already has been stated by the UCC in  
14 docket -- I believe it's in response to the mediation Amended  
15 Report and Recommendation in docket 11482, the UCC will pursue  
16 litigation notwithstanding whatever happens to the Plan,  
17 either confirmed, not confirmed, modified. We believe, Your  
18 Honor, in judicial economy, that if we are allowed to  
19 continue our motion practice, particularly our Motion to  
20 Dismiss, to commence that briefing schedule will allow us to  
21 narrow the scope of legal issues in that adversary  
22 proceeding, particularly on the part that -- the Complaint  
23 has approximately 60 counts, and there are many legal issues  
24 separate, independent from the Confirmation Plan issues.

25 So we believe, if we can be allowed to address in a

1 Motion to Dismiss briefing schedule those issues, we're  
2 allowed to narrow scopes of a legal nature, and if there's any  
3 kind -- for example, Your Honor, if we're able to, from those  
4 60 counts, be able to dismiss 40 counts strictly on issues of  
5 law, nothing of discovery or anything further of that  
6 adversary proceeding, we're allowed to narrow scope for this  
7 Honorable Court to move on as to those legal issues in that  
8 matter.

9 And finally, Your Honor, even if there's any worry as  
10 to the constitutional validity claims that might be addressed  
11 in that adversary proceeding for the GO bonds, we're willing  
12 to carve that out and allow the process to literally attend  
13 whatever's not related to any GO bond constitutional issue.

14 And we agree wholeheartedly with what Judge Houser  
15 stated earlier this morning. Let's finish it. And in our  
16 case, let's allow us to at least proceed with the motion to  
17 dismiss briefing schedule.

18 That would be all, Your Honor.

19 THE COURT: Thank you, Mr. Rotger.

20 Is there anybody else who wants to be heard before I  
21 ask the Oversight Board's attorney to come back up?

22 (No response.)

23 THE COURT: Looks like not.

24 Mr. Bienenstock or Mr. Rosen.

25 MR. BIENENSTOCK: Your Honor, would it be possible to



1 have a ten-minute recess before we respond?

2 THE COURT: Yes. So since it's a little after 20  
3 past 4:00 -- 20 past 3:00, let's come back at 3:35.

4 MR. BIENENSTOCK: Thank you.

5 (At 3:20 PM, recess taken.)

6 (At 3:41 PM, proceedings reconvened.)

7 THE COURT: Now, we are going to take one matter out  
8 of order, because individuals who wish to speak in connection  
9 with the contested claims objections, which were at the end of  
10 the Agenda are here, and I want to make sure they don't have  
11 to come back tomorrow.

12 So we are now going to Agenda Item VII.1 and --  
13 actually, I'm not -- Ms. Stafford probably understands exactly  
14 how this lines up with it better than I do at the moment, so  
15 please.

16 MS. STAFFORD: Of course. And actually, I have a bit  
17 of an update with respect to these contested claim objections  
18 as well -- excuse me -- which relates to a question that we  
19 received from the Administrative Office with respect to the  
20 late filed responses that have come in with respect to the  
21 objections that were originally scheduled for the December and  
22 the January Omnibus hearings.

23 We're preparing a filing to address this issue, but  
24 the gist of that filing will be to provide a brief further  
25 extension of the deadline to respond to objections that were

1 originally scheduled for those hearings. This brief, one-time  
2 extension is in recognition of some of the difficulties that  
3 claimants may have faced during the holiday season and in  
4 light of the January earthquake swarm.

5 So we anticipate setting a date certain for further  
6 responses to those objections and adjourning the hearing as to  
7 any additional responses received until the April 22nd, 2020,  
8 Omnibus hearing. And so hopefully we can work with whichever  
9 claimants have appeared and make sure that we have the  
10 information necessary to address those objections.

11 THE COURT: And so I understand that Ms. Angelica  
12 Carrasco and Ms. Sandra Torres are here. And so I don't -- we  
13 hadn't queued up discussion for today, objections to their  
14 claims.

15 MS. STAFFORD: That's correct, Your Honor.

16 THE COURT: And so when had -- have you adjourned  
17 those to April already, or were you planning to adjourn them  
18 to April?

19 MS. STAFFORD: Those were already adjourned to April.  
20 And we had spoken with both Angelica and Sandra in advance of  
21 the hearing and informed them that the hearing would be in  
22 April for their claims.

23 THE COURT: All right. And so Ms. Carrasco and  
24 Ms. Torres, would you identify yourselves?

25 MS. CARRASCO: (Raised hand.)

1 MS. TORRES: (Raised hand.)

2 THE COURT: And so would you please come forward to  
3 the podium? I need to ask both of you a question in the first  
4 instance. So will you both come?

5 MS. CARRASCO: Buenas tardes.

6 THE COURT: Buenas tardes.

7 THE INTERPRETER: Good afternoon.

8 THE COURT: Good afternoon.

9 THE INTERPRETER: For the record, Olga Alicea,  
10 interpreter.

11 THE COURT: Thank you, madam interpreter.

12 (Whereupon Ms. Carrasco and Ms. Torres spoke with the  
13 use of the interpreter.)

14 THE COURT: Now, my question is this. The Oversight  
15 Board's representative is not going to be seeking to overcome  
16 your claims today. They want to address them in April.

17 MS. CARRASCO: All right. There's no problem.

18 MS. TORRES: No problem.

19 THE COURT: And they're planning to speak to you in  
20 the meantime.

21 MS. CARRASCO: Okay.

22 MS. TORRES: Thank you.

23 THE COURT: So do you want to speak to me today, or  
24 will you wait to talk to the Oversight Board and see whether  
25 it can be worked out before April?

1 MS. CARRASCO: We can wait until the April 22  
2 hearing.

3 THE COURT: All right. Thank you very much. I think  
4 that's the best thing to do. And thank you for waiting all  
5 day today.

6 MS. CARRASCO: Thank you.

7 MS. TORRES: Thank you.

8 THE COURT: Take care.

9 So then let's do -- you don't have anyone actually  
10 appearing on the rest of the contested claims?

11 MS. STAFFORD: That's correct, Your Honor.

12 THE COURT: So we'll put that back to the end of the  
13 Agenda again.

14 MS. STAFFORD: That's fine, Your Honor. Thank you.

15 THE COURT: All right. Thank you so much.

16 And so now we will resume with the Oversight Board's  
17 response to all of the comments in response to the mediation  
18 team report.

19 MR. BIENENSTOCK: Thank you, Your Honor. Martin  
20 Bienenstock, Proskauer Rose, LLP, for the Oversight Board.

21 I notice I was given 15 minutes. My colleagues tell  
22 me we had reserved more, because we didn't use much of  
23 anything up front. Is that --

24 THE COURT: I don't know where the --

25 (Discussion held off the record between the Court and

1 Law Clerk.)

2 THE COURT: Okay. I'm told that you actually used  
3 20.

4 MR. BIENENSTOCK: Okay. I'll do my best.

5 THE COURT: So let's start with 20 and see where you  
6 are.

7 MR. BIENENSTOCK: Thank you. Because I want to leave  
8 some time for my colleague, Mr. Firestein, to get into some of  
9 the nitty-gritty dates that I may not get right.

10 THE COURT: All right. Well, I think there was some  
11 going over, there were some extra speakers, so I want to be  
12 able to hear fully. So I'm going to give you half an hour on  
13 the clock.

14 MR. BIENENSTOCK: Okay. Thank you, Your Honor.

15 THE COURT: And you can split that with  
16 Mr. Firestein.

17 MR. BIENENSTOCK: Thank you.

18 To start, Your Honor, and I will make this as brief  
19 as possible and not use the whole time if we can avoid it, but  
20 I want to start with one basic proposition, since we're here  
21 talking about scheduling leading up to a disclosure statement  
22 hearing. And we've heard a lot about requests for discovery  
23 and what the Disclosure Statement should say, and how do  
24 people know what objections they can make without taking  
25 discovery, et cetera, et cetera.

1           Section 1125 of the Bankruptcy Code provides that the  
2 purpose of the disclosure statement is to provide adequate  
3 information for the hypothetical claim holder to determine how  
4 to vote on the Plan.

5           The irony, Your Honor, is everyone in this room who  
6 has addressed the Court knows exactly today how they're voting  
7 on the Plan. So this notion that the Disclosure Statement may  
8 not have adequate information, we submit, is a phony premise  
9 to begin with.

10           With that, I want to talk about the individual  
11 comments made by each of the creditors. For the Statutory  
12 Creditors Committee, Your Honor, the -- Mr. Despina started  
13 off by quoting from something that Proskauer for the Oversight  
14 Board wrote in a brief concerning the -- I think the Lift Stay  
15 Motions of the monolines in connection with the Commonwealth,  
16 PRIFA, HTA, et cetera. But I think it was in the Commonwealth  
17 PRIFA Lift Stay Motion.

18           And he quoted that language that we wrote in talking  
19 about the statutes governing the monolines' rights, which were  
20 statutes that the Commonwealth has that provide for the  
21 transfer, appropriation of rum excise taxes to PRIFA on an  
22 annual basis. But may believe that that was the same priority  
23 statute as the priority statute that the Committee is urging  
24 the Court to have litigated immediately, which is the priority  
25 in Article 6, Section 8 of the Puerto Rico Constitution.

1           And just at the outset, I want to make crystal clear  
2   that comments we might have made about -- that we did make  
3   about Commonwealth statutes appropriating monies, and  
4   Commonwealth statutes promising to continue to appropriate  
5   monies until the debt is paid, frankly, have nothing to do  
6   with a priority in the Puerto Rico Constitution.

7           The reason that that issue probably never has to be  
8   determined in the Puerto Rico Constitution, and certainly not  
9   early or before confirmation, is as follows. With the deals  
10  that are embedded in the Proposed Plan of Adjustment, with the  
11  holders of the GO debt, we obviously come to a compromise of  
12  those priority claims.

13          There are other creditors, as was pointed out to Your  
14  Honor, who have not settled, but they're not, for the most  
15  part, GO creditors. They are the Unsecured Creditors  
16  Committee, which is saying, we don't see why you should give  
17  so much to those GO debtholders, so much more than you're  
18  offering us, because we don't think they really have a  
19  priority.

20          We are classifying the unsecured claims that are not  
21  GOs in several different classes. And they will have the  
22  right at the confirmation hearing, if they reject the Plan, to  
23  argue to Your Honor that the Plan -- the Plan's treatment of  
24  them constitutes unfair discrimination. That is clearly an  
25  issue that should be dealt with at the confirmation hearing.

1           To determine whether there is unfair discrimination,  
2 the Court is not going to have to determine the issue that was  
3 settled. The Court will only have to determine whether the  
4 rights of the unsecured claimholders who do not have any GO  
5 priority are adequately paid under the Plan.

6           And as a concrete for instance, Your Honor, if the GO  
7 priority were to prevail, if Your Honor were to say it's a  
8 matter of statutory priority enforceable under PROMESA Title  
9 III, there are lots of costs to the Commonwealth and to all  
10 the other creditors of that ruling. Because that would mean,  
11 if it's enforceable according to its terms, that as others  
12 have said to you, they get all available resources. And then  
13 it would only be the police power that would let us use money  
14 to pay police and firemen and teachers and health care, et  
15 cetera.

16           There is a reason to put them in a separate class,  
17 because the downside of losing to them is pretty great, and  
18 we're settling to avoid that downside. There's nothing wrong  
19 with that. We can put the unsecured claimholders, who don't  
20 have the GO priority claims, in a separate class. Say, look,  
21 you don't have those priority claims to begin with. You say  
22 that you're the same as them, but you're really not, because  
23 if we lose to you, we don't lose -- we're not losing all the  
24 available resources of the Commonwealth.

25           In addition, the GO holders have another argument,



1 and that is that even if they don't have a statutory priority  
2 that's enforceable under PROMESA, they effectively have the  
3 equivalent of a senior-junior priority, as in a senior bond  
4 indenture against a junior bond indenture, that everyone who  
5 bought debt knows that they come first.

6 That's another claim they have that the unsecured  
7 claimholders don't have, and both those claims are entitled to  
8 be settled. That doesn't mean that paying people who don't  
9 come into this case with those types of possibilities have to  
10 be treated the same.

11 So it's not a matter of do they really have a super  
12 priority. It's a matter of will there be unfair  
13 discrimination. And that, the Court can decide at  
14 confirmation.

15 Now, the Committee also said that we're asking in the  
16 Plan that all Puerto Rico law be ruled preempted. Well,  
17 that's wrong. What the Plan -- the Proposed Plan says is that  
18 all inconsistent law is preempted. And we're asking for  
19 rulings as part of confirmation that the statutes we put on a  
20 list that we attach to the Plan are preempted, and we have to  
21 do that for the following reason. If we don't, then the day  
22 after confirmation, the GO creditors can say, hey, we're  
23 entitled to all available resources for the old debt; or the  
24 instrumentality, such as HTA and PRIFA, can say, we get all  
25 these rum excise taxes starting tomorrow, because the statute

1 | says we do. Well, we have to know what's preempted and what's  
2 | not, otherwise, the Plan can't work after confirmation.

3 |           Now, I want to correct myself. We have not put on  
4 | the list of preempted statutes the provisions in the Puerto  
5 | Rico Constitution, because we are settling with that. And  
6 | that settlement, with those holders, will be binding on them,  
7 | and that's enough.

8 |           But for everyone else, especially those not settling,  
9 | we need to know which statutes can be enforced against the  
10 | Commonwealth after confirmation and which cannot.

11 |           THE COURT: So do you -- when you say settling  
12 | bondholders, do you mean accepting classes in the various  
13 | slices that you've created, as opposed to nonaccepting  
14 | classes, or what?

15 |           MR. BIENENSTOCK: Well, I'm saying both, an accepting  
16 | class or a class that the Court determines is -- can be  
17 | validly crammed down under Section 1129(b). It would be both.

18 |           THE COURT: Thank you. Okay.

19 |           MR. BIENENSTOCK: As far as giving bondholders a veto  
20 | over what other creditors can get, we're not sure what the  
21 | Committee is talking about. In this case, we have to point  
22 | out, and I know the Court knows, that the Fiscal Plan contains  
23 | a debt sustainability analysis. That's the limit. That's the  
24 | limit of the debt that can be issued. It has nothing to do  
25 | with debtholders.

1           The Committee also made a case they need extensive  
2       discovery before the Disclosure Statement hearing why the Plan  
3       assumes certain guarantees and different deals are made with  
4       different vintages of debt. We don't know why that is.

5           They will be entitled to confirmation discovery  
6       presumably, if they want to challenge the settlement, as the  
7       Court alluded to earlier. The settlement with each class, to  
8       the extent they are settlements, will be litigated, and we'll  
9       have to show they're in the realm of reasonableness. But  
10      that's not something that has to go into the Disclosure  
11      Statement.

12           And we'll give our reasons. We already give our  
13      reasons in the Disclosure Statement for making the  
14      settlements. If they want more discovery about it, that's a  
15      confirmation discovery issue.

16           As far as AAFAF, Your Honor, we are continuing to  
17      work with the government to try to obtain its support. And in  
18      that regard, you know, some people said, where did this June 3  
19      date come from. I want to point out that under the Bankruptcy  
20      Rules, only 25 days notice is required for a disclosure  
21      statement hearing, and then again for a confirmation hearing,  
22      plus three days for mailing, if we're still using mail.

23           And here we're talking about 95 days from February  
24      28, or 96, for the Disclosure Statement hearing. A lot  
25      longer, seven and a half months, for the confirmation hearing.

1 And if you look at our prior Plan and Disclosure Statement,  
2 people have had a lot -- hundreds more days to look at both.

3 But bottom line, and it's no secret, Your Honor, not  
4 only is there a presidential election in the United States in  
5 November, but there's an election in Puerto Rico as well. And  
6 if we get the current Governor and both legislative houses to  
7 support the Plan and provide legislation that will make it  
8 smoother and more feasible, that's good for everybody if a  
9 plan is confirmed.

10 And we all run a risk, and we've said this in many  
11 contexts to the Court, that since one legislature cannot bind  
12 the next, we don't know if a new government, and who might  
13 change in the new government, will decide to be bound or not  
14 by the deal we cut.

15 And so yes, there is a reason to try to get it  
16 confirmed with a government that can agree to it and do it,  
17 rather than agree with one government and then hope a new  
18 government will agree to it. It's just reality, Your Honor,  
19 and we're not ashamed to say it.

20 As far as Assured's objections that somehow we are  
21 settling its claims, to our knowledge, we are not. If they're  
22 talking about GO debt, the 2011 GO debt that they rep part of  
23 is being allowed. We're not imposing a settlement of the  
24 allowance.

25 And they can, of course, object to treatment in their

1 class, but if the class accepts, they may be bound by it. If  
2 they're objecting to the fact that their claims are separately  
3 classified than pure bondholder claims, that's a  
4 classification issue. For lots of reasons, we -- while you  
5 are allowed under the Bankruptcy Code to classify similar  
6 claims together, there is no requirement that similar claims  
7 be classified together. And frequently, bond insurers ask for  
8 separate classifications because they have some individual  
9 needs that others don't.

10 But in any event, whether they like separate  
11 classification or not, it's just a classification issue.  
12 We're not imposing on them an allowance of their claim.  
13 Whatever they -- we're not giving up our rights to object to  
14 their claim, and we're not asking them to give up their rights  
15 to have it allowed in whatever allowable amount it's supposed  
16 to have.

17 As far as a comment was made on behalf of Assured  
18 that we created June 3 out of the blue so hedge funds can  
19 trade out, I explained already why we think June 3 is plenty  
20 of time. But as far as the comment about hedge funds, who  
21 obviously Proskauer and the Oversight Board do not represent,  
22 but we do just want to say, as a matter of fact, they can  
23 trade out now. The deal we cut with them is public. The deal  
24 we have with them says, if they trade to anyone, whoever buys  
25 is subject to the deal they cut.

1           So they don't need a disclosure statement or a  
2 confirmation order at any particular time. The deal is  
3 public. They can trade now. And as far as we know, they do  
4 trade now. So it's certainly not some special favor to the  
5 hedge funds why the June 3 date is coming in. It's coming in  
6 for the reason I mentioned earlier.

7           It's also -- there's another reason for June 3, and  
8 that is that one of the most important jobs of the Oversight  
9 Board is to create a sustainable economy and to put them on a  
10 sustainable path. As much as we would like to do it now, we  
11 are constantly told that until we've cleaned up the debt, we  
12 can't expect to get nearly as much new investment in Puerto  
13 Rico.

14           What that means is every day that it stays in Title  
15 III is a day of economic recovery lost, and it's just we  
16 should minimize that time. That's all there is to it.

17           Assured also complained that they said there was no  
18 effort to negotiate HTA, PRIFA, et cetera. We don't have  
19 HTA -- PRIFA is not a Title III debtor yet. HTA is, but its  
20 plan is not on for confirmation. Its plan will require a  
21 discussion of whether rate hikes are possible, toll hikes,  
22 whether other fees are possible. All kinds of things.

23           They haven't been precluded. They haven't -- and  
24 they're not being crammed down. There's just no plan there.  
25 It's not as if we're running forward on an HTA plan without

1 negotiating with them. We don't have an HTA plan yet. We  
2 wish we did, but we don't.

3 And as to the comments that we should --

4 THE COURT: And so the -- sorry. So the dividend  
5 proposed for revenue for -- is there a dividend proposed for  
6 HTA revenue bonds and --

7 MR. BIENENSTOCK: No. No.

8 THE COURT: The 3.9 percent --

9 MR. BIENENSTOCK: No.

10 THE COURT: -- what's that settling --

11 MR. BIENENSTOCK: The Plan, the Commonwealth Plan has  
12 a class for claims that will be either lodged by HTA or its  
13 bondholders against the Commonwealth.

14 THE COURT: You didn't let me finish my sentence.

15 MR. BIENENSTOCK: Oh, I'm sorry.

16 THE COURT: I was going to ask you whether that was a  
17 proposed settlement of the claims against the Commonwealth  
18 with a treatment contemplated later under a separate HTA plan?

19 MR. BIENENSTOCK: Well, it would affect a separate  
20 HTA plan, but -- it would affect a separate HTA plan.

21 May I have a moment with my partner?

22 THE COURT: Yes.

23 MR. BIENENSTOCK: I'm worried I'm -- Your Honor, I  
24 was correct. There is no HTA plan being proposed. The  
25 Commonwealth Plan, which does now have ERS with it and PBA,

1 does have a class in it for whatever allowable claims there  
2 are by HTA or its bondholders against the Commonwealth. And  
3 they will either get that or HTA will get it, but ultimately,  
4 that's not the HTA plan. HTA will have its own plan that will  
5 take into account what it can pay its creditors.

6 THE COURT: Thank you.

7 MR. BIENENSTOCK: Now, Assured also made the argument  
8 that the Lift Stay Motions are vehicles for the gating issues.  
9 And I know my partner wants -- might have more to say about  
10 this. This has not been, to be polite, a consistent story.  
11 And there are problems on multiple levels.

12 First, Assured and other monolines pointed the Court  
13 to the First Circuit's *Grella* case and other decisions that  
14 talk about quick stay --

15 COURT REPORTER: I'm sorry. The --

16 THE COURT: The First Circuit's --

17 MR. BIENENSTOCK: *Grella*, G-r-e-l-l-a. I'm sorry.

18 That talk about quick stay relief motions and  
19 hearings where colorable claims can be alleged, and then they  
20 explain what colorable is. And the outcome of those hearings  
21 is not always binding for other purposes, and the monolines  
22 have made a big deal of that.

23 We are looking for rulings that are binding for all  
24 purposes. And none of us, and probably even at this point the  
25 Court doesn't know what will be appropriate and what will be



1 possible and legal.

2           To just to take one example, because I think it makes  
3 the point graphically, the Court could take a look at some of  
4 the monolines' allegations that we have eight billion dollars  
5 in the bank and say, well, look, whether you have a secured  
6 property interest or not, the Commonwealth has eight billion  
7 dollars stacked up to pay you, if you're entitled to it.  
8 You're adequately protected. You don't get stay relief.

9           Well, that would be a nice ruling in that no stay  
10 relief is granted, but it wouldn't solve any of the gating  
11 issues. So none of us can know at this point how the Court  
12 will end up dealing with those issues. And what the monolines  
13 will argue at the final moment is how binding that ruling is,  
14 because it came out of a stay relief hearing -- motion.

15           So we took their claims -- the adversary proceedings  
16 are not things that we really initiated. We took their  
17 claims, and instead of just objecting to their claims, we made  
18 it an adversary proceeding to avoid any issues under  
19 Bankruptcy Rule 7001.

20           And the gating issues, contrary to the comments made  
21 by Assured and other objectors, are truly virtually all pure  
22 legal issues. The statutes that require the appropriation of  
23 rum excise taxes to PRIFA, they're either preempted or they're  
24 not. They're either enforceable or not, because one  
25 legislature cannot bind the next to appropriate monies year

1 after year after year. They're either inconsistent with Title  
2 III and the Bankruptcy Code provisions it embeds or not.

3 These are legal issues, and these are the key gating  
4 issues. Whether HTA bondholders or PRIFA bondholders, under  
5 PROMESA Section 407 or otherwise, have claims back against the  
6 Commonwealth if the appropriations are stopped really is not  
7 gating, because if the unsecured claim pool is expanded, so  
8 it's expanded. I mean, that's not going to stop a  
9 confirmation we don't believe, at least now.

10 So the real gating issues are exactly that. And  
11 they're crisp, and they're legal, and they are raised in the  
12 context of the stay relief motions, but we can't be sure the  
13 Court will decide them for the reasons I've given, or for  
14 maybe other reasons we haven't contemplated.

15 So the summary judgment motions on the adversary  
16 proceedings raise these gating issues that I've mentioned in a  
17 way that there will be no argument that we're aware of, or no  
18 meritorious argument that the issue is not decided for all  
19 purposes. Today --

20 THE COURT: And you believe -- I'm sorry. And you  
21 believe you can cue them up in a way that would not support a  
22 legitimate 56(d) response?

23 MR. BIENENSTOCK: Well, if there's a 56 --  
24 legitimate, that's correct. Yes. The answer is yes. Because  
25 as I've put out, what we see as the gating issues, and I'm

1 | sure I didn't list all of them, but none of what I mentioned,  
2 | each of which is critical, requires discovery. They're  
3 | matters of law.

4 |           And Ambac mentioned another matter of law. Is  
5 | PROMESA constitutional as a Uniform Bankruptcy law? That's  
6 | not going to require discovery, Your Honor. That's a matter  
7 | of law.

8 |           Your Honor, I was in the room at Proskauer's offices  
9 | with Judge Houser, often with Judge Colton, with National and  
10 | its lawyers, and Assured and its lawyers, and lots of other  
11 | monolines and their lawyers. As the Court knows, we can't  
12 | divulge and I won't --

13 |           THE COURT: I was going to underscore that for you,  
14 | yes.

15 |           MR. BIENENSTOCK: -- the mediation, but I cannot  
16 | comprehend what they meant when they accused I guess all of us  
17 | of excluding them from mediation, because they were there. I  
18 | was there. I don't know what we were doing if we weren't -- I  
19 | mean, enough said.

20 |           THE COURT: Yes, enough said. The proposition that I  
21 | have heard is that at some point or points in time, considered  
22 | significant by some, everyone was in the same room pleased,  
23 | and everybody ran up here for half an hour telling me that,  
24 | you know, it wasn't the --

25 |           MR. BIENENSTOCK: As the Plan provides, as a matter

1 of belt and suspenders, that money paid to the GOs shall first  
2 be deemed the property taxes and then the clawback revenues.  
3 We don't believe that's legally required for any purpose, but  
4 we're trying to avoid legal issues by that means as well so  
5 that there's no discovery necessary as to how do we use it.

6 We're saying, that amount is going to go to GOs. So  
7 if that's an enforceable provision of the Puerto Rico  
8 Constitution, it will be carried out.

9 The argument was made by one of the monolines that  
10 the fact that the Court has granted discovery for the Lift  
11 Stay Motions means that these are not purely legal issues.  
12 The Court, I think, knows exactly what it meant when it  
13 granted discovery.

14 To my knowledge, the Court was granting discovery.  
15 It wasn't making a finding in advance that this was necessary  
16 to determine the issues. And I remind Ambac that the issue  
17 was set up on July 24 on the papers and the documents. The  
18 documents were the only facts other than law that were  
19 relevant. And ultimately, we think it will be decided still  
20 on that.

21 As far as Mr. Sosland's objection for FGIC that he  
22 shouldn't be restricted to what he can move for summary  
23 judgment on, Your Honor, if it's a matter of law, that's  
24 probably right. And I don't think we would object if they  
25 found abstract legal issues, because if they're gating issues,

1 we want them decided.

2 And if it's okay, I'd like to give my last couple  
3 minutes to Mr. Firestein.

4 THE COURT: Yes.

5 MR. BIENENSTOCK: Please.

6 MR. FIRESTEIN: So, Your Honor, Michael Firestein of  
7 Proskauer on behalf of the Board.

8 I just want to punctuate a couple of points here.  
9 First of all, just to take Mr. Bienenstock's last point  
10 relative to FGIC and their desire to bring other claims, the  
11 word of the day is triage. And what Judge Houser and the  
12 mediation team sought to try to avoid was the deluge of  
13 litigation that was going to be presented.

14 This was the judgment of the mediation team as to  
15 what the key gating issues should be and ought to be, in the  
16 first instance, with respect to trying to change people's  
17 mind, or refocus folks' attention in an effort to build  
18 greater consensus, or better, or of equal importance, maybe  
19 suggest that the Plan in its current form, because of the  
20 Court's determinations on certain gating issues, is not  
21 feasible.

22 No one is here suggesting that any one of those  
23 issues is waived, forfeited or anything else. It's a question  
24 of trying to get education from the Court, with the Court's  
25 guidance, so that people can make intelligent decisions.

1 I want to make one punctuated comment with respect to  
2 the lift stay vehicle. And I see I have 25 seconds on the  
3 clock, but let me do my best here.

4 THE COURT: We'll put another five.

5 MR. FIRESTEIN: Thank you so much, Your Honor.

6 The monolines come up here and say that the Lift Stay  
7 is the correct vehicle, and some of them did it with  
8 considerable emphasis. As we have said before, we -- and  
9 remain so, we are agnostic to which vehicle is used in order  
10 to come to some form of binding decision.

11 But the monolines wrote in their Response to the  
12 Mediation Report that the conclusions that this Court might  
13 reach, or that even might be affirmed at the First Circuit  
14 level with respect to a success for the Board in a pursuit of  
15 its defense, would not necessarily be binding. We needed an  
16 alternative vehicle for doing it.

17 They have suggested that that alternative vehicle now  
18 be stayed. That's nonsense. That doesn't get us anywhere.  
19 And it was the mediation team and the mediation leader's  
20 judgment that the best way to have a backup plan with respect  
21 to trying to getting these gating issues resolved on the  
22 merits was to do so through a Rule 56 motion.

23 And the only suggestion that we made in our  
24 recommended edits to the Mediators' Report was to when this  
25 Court makes its determination, hopefully expeditiously,

1 relative to those gating issues at the preliminary hearing for  
2 the Lift Stays, that the parties be directed to meet and  
3 confer to determine whether there is actually a continuing  
4 need for the Rule 56 motions.

5           So the comments that have been made relative to the  
6 Order that was in place before as being a fully comprehensive  
7 and agreed upon schedule for things to do -- we're not trying  
8 to increase motions. In fact, when I came to the podium  
9 before the lunch hour, we said we were all in favor of staying  
10 the Rule 12 motions, which, I might add, with the most limited  
11 of exceptions -- which I don't want to get too granular, but  
12 by and large, are not related to the gating issues that the  
13 mediation team determined at the outset.

14           I didn't hear a single person from the monolines, the  
15 people who have filed these motions, say anything about  
16 whether they were amenable to that. But they use it as a  
17 vehicle for saying that there are a number of motions that are  
18 outstanding, that are just going to be a deluge.

19           We reiterate, we're in favor of a stay of those  
20 particular motions, because the point is -- and the mediation  
21 team's recommendation was a concern regarding what the  
22 applicability would be of Rule 12, or the usability of Rule  
23 12, to get to a decision on the merits on significant issues.  
24 That's why we've got this bifurcated path to try to do that.

25           THE COURT: So let me go back to the question of

1 adjustment of timing of the commencement of this proposed  
2 summary judgment motion practice in light of the time shift on  
3 the Lift Stay Motions.

4 Judge Houser's opening bid was to have broad-based  
5 summary judgment motions covering all the potential outcomes  
6 of lift stay filed before I hear the Lift Stay Motion, and  
7 then a timetable that would get them briefed and argued before  
8 the Disclosure Statement hearing. I suggested at least  
9 waiting until a couple, whatever days after the argument, so  
10 that the parties would be in a position to be more selective  
11 about what arguments to go forward with on the lift stay  
12 motion practice -- on the summary judgment motion practice  
13 post Lift Stay.

14 You've now been talking about meeting and conferring  
15 after Lift Stay to determine whether summary judgment motion  
16 practice is necessary or to what extent. So what is your kind  
17 of bottom line, logistical position about that motion  
18 practice?

19 MR. FIRESTEIN: I understand. I get that, Your  
20 Honor. And let me say it this way. We're constrained a  
21 little bit by the calendar, and I readily acknowledge that.  
22 I'm amenable, and we are amenable to the schedule that was  
23 proposed by Judge Houser this morning on that.

24 I recognize that even under that schedule, the  
25 summary judgment motions will need to be filed by March the



1 27th, but if I were a betting man, I would submit that on  
2 those gating issues, I bet we don't see cross motions for  
3 summary judgment from the monolines. And the reason is  
4 because they think that discovery is necessary relative to  
5 those issues.

6 So it's their choice as to whether they want to do it  
7 or not, and the Order provides for them the opportunity to do  
8 so. But I am prepared to file the motions in advance, because  
9 I recognize what the calendar says, given the June 3rd  
10 hearing. But nonetheless, we will be well in advance of any  
11 opposition that would be necessary, or even potentially a Rule  
12 56(d) motion that might be made if we are able to get some  
13 determination expeditiously relative to those -- many of those  
14 very same gating issues regarding the Lift Stay Motions.

15 They were not selected in a vacuum. By and large,  
16 the issues that are present in connection with the proposed  
17 Rule 56 motions are the issues that we are hoping for  
18 expeditious resolution in connection with the Lift Stay. I  
19 can't say it's exclusive, but they are matters -- but for, by  
20 and large, the most part, and the key ones for sure are  
21 included in there. And my recommendation was to direct the  
22 parties to meet and confer when the -- when the Court gives  
23 whatever its indication might be.

24 For all we know, Your Honor, you might provide a  
25 determination at the preliminary hearing with an order to

1 follow, so that the parties are -- get a clear guidance as to  
2 what the Court's intentions are going to be. And if it  
3 disposes or dispenses with the need for Rule 56 motion  
4 practice, we're in favor of that.

5 It's not about trying to jam additional pleadings on  
6 motion practice. It's only about a singular objective, which  
7 is to obtain a ruling.

8 I might add, if I could, Your Honor, that the comment  
9 that I made about the 12(b) motions is equally applicable to  
10 Mr. Despins' comment concerning the 12(c) motion that is  
11 pending in the PBA lease litigation that was filed some time  
12 ago.

13 Everyone keeps talking about the notion that there's  
14 only one more brief to file, and we ought to be able to just  
15 do that and get the Court's ruling on that. That is an issue  
16 that is being settled. If we successfully defeat that  
17 12(c) -- that 12(c) motion that was brought by the GO holders  
18 in connection with that, that doesn't accomplish much for us.  
19 It only means that it wasn't determined as a matter of law.  
20 Alternatively, if that 12(c) motion was granted, it reminds me  
21 somewhat of the COFINA predicament where a determination of a  
22 matter that is being settled really doesn't make a lot of  
23 sense under the circumstances. So I view the 12(b) issues and  
24 the 12(c) issues largely in parallel.

25 The problem that we had when we were constructing the

1 Interim Order in the first place was we didn't have any  
2 vehicle to operate with. And we were initiating the adversary  
3 proceedings in order to try and accomplish something.

4 As time has gone on, and interestingly enough, the  
5 orders designated as interim orders mean what they say. They  
6 are interim orders. Circumstances have changed. And as a  
7 result of those changed circumstances, the mediation team  
8 changed its judgment about what it believed was the best  
9 process forward. So it is not the Rosetta Stone, the original  
10 order. It was merely a point in time in which we were  
11 presented and which the Court issued orders given what the  
12 facts and circumstances were at that time.

13 And if I can, Your Honor, I just want to make two  
14 very brief comments, one in particular regarding what the  
15 Court said about potentially including in the order, and, of  
16 course, it's the Court's decision relative to that, but if  
17 anybody feels that they need to file something, they can, you  
18 know, seek relief for good cause shown.

19 I'm reminded of the cliché of be careful what you  
20 wish for, right? Because as soon as you give someone the open  
21 door for that, there's very competent lawyers in this room who  
22 are passionate about the cause they believe in. And I am with  
23 100 percent certainty confident that you will see a host of  
24 filings that come in, or at least the risk of that. And in  
25 the --

1 THE COURT: And the filers run the risk of my saying  
2 no.

3 MR. FIRESTEIN: I'm sorry, Your Honor?

4 THE COURT: The filers run the risk of my saying  
5 no.

6 MR. FIRESTEIN: That is indeed true. But it is more  
7 pleadings and more things that people would have to oppose  
8 under the circumstances, and --

9 THE COURT: Don't I know it.

10 MR. FIRESTEIN: Yeah, don't you. Right. Exactly.

11 And just finally, finally, Your Honor, a comment  
12 about the 926 issue. I mean, these proceedings have been  
13 going on for quite some time. The revenue bondholders make it  
14 sound like they've been prevented from bringing such a motion  
15 from, you know, the beginning of time until now. That's not  
16 true, at least not to my knowledge, subject to the stay that  
17 has existed since last summer. And the interim -- excuse me,  
18 the Amended Report and the proposed orders thereunder provide  
19 specifically for them to bring such a motion, or however it's  
20 characterized, this conflicts-based motion, if they feel the  
21 need to do so.

22 The amended schedule that was proposed by Judge  
23 Houser a few moments ago sounds exactly right to me. The  
24 First Circuit heard argument yesterday. We don't need to talk  
25 about what happened in that court. We can all read the press

1 pieces about --

2 THE COURT: Precisely.

3 MR. FIRESTEIN: -- what happened. And, you know,  
4 with any luck, we'll see an expeditious resolution from the  
5 First Circuit, given the fact that that appeal was expedited  
6 at the request of the appellants. So perhaps we'll get a  
7 ruling soon that might have some bearing on what goes on here.

8 And with that, Your Honor, I have greatly exceeded my  
9 time. And unless the Court has questions, I would close by  
10 saying that there are a lot of judgments that the creditors  
11 have asked the Court to make about what's going to happen in  
12 the future and how viable the Plan could be. I'm relying on  
13 facts. And where we are today is that there's a lot more  
14 people in support of the Amended PSA, and a lot more holders  
15 as proponents of the Plan than there was several months ago  
16 when the original plan was proposed.

17 That does not diminish the passion of those who are  
18 opposing it, but we need to put this in context. And if facts  
19 and circumstances change again in the future, just like they  
20 changed, which led to the Amended Report being filed by the  
21 mediators with the judgments that they made that were  
22 different than before, I'm confident that this Court's doors  
23 will be open to hear about that. And frankly, on a regular  
24 basis, we're in front of Your Honor anyway on a variety of  
25 matters.

1                   So I submit, Your Honor, that the Amended Report  
2                   should be entered as proposed; that the recommended schedule  
3                   by Judge Houser that she suggested this morning be included.  
4                   If the Court wants to consolidate the Rule 12 motions and the  
5                   Rule 56 motions, or stay them in some way, we're amenable to  
6                   that, too. It's just about getting to the finish line.

7                   Thank you, Your Honor. Unless the Court has  
8                   questions --

9                   THE COURT: No. Thank you.

10                  Is there anyone who has a vital need to be heard  
11                  further on this?

12                  MR. DESPINS: Just real quick.

13                  THE COURT: Hello, Mr. Despins.

14                  MR. DESPINS: I know I'm taking my chances here, but  
15                  I left one minute 20 on the clock last time. So I'm not going  
16                  to use all of it, but Mr. Bienenstock said that, we don't know  
17                  where he's getting this idea of a debt cap or a debt limit.  
18                  It goes to the issue of the fact that the Board has its hands  
19                  tied. They cannot give us more debt.

20                  This is in the PSA Agreement, 4.7(b), legal  
21                  protections. It says, The plan shall include the following  
22                  legal protections.

23                  You go to sub 10, it says, Pursuant to the new GO  
24                  legislation, et cetera, et cetera, the new tax supported debt  
25                  will be -- there's a fraction there -- 9.16 percent of debt

1 policy revenues.

2 Basically, that's where the debt cap is, and it's now  
3 in the Plan at Section 57.4. If you do the math -- well, I  
4 can't do the math, but if a financial advisor does the math,  
5 it will show that there's money -- there's no additional debt  
6 available other than that's built into the Plan today.

7 And the second point is that he said, well, that I  
8 cited, on the preemption issue, filings in the context of the  
9 revenue bonds, which I did say was that, but I did that  
10 because they were recent filings. But there are older filings  
11 where -- you know, signed by Proskauer that, in the context of  
12 the GO bonds, say exactly the same thing.

13 These are cited in our GO priority objection in the  
14 footnote. There's at least five instances of that. I didn't  
15 cite those, refer to those, because he would have said they're  
16 old. But, I mean, the point is they've taken the exact same  
17 position with respect to GO bonds.

18 Thank you.

19 THE COURT: Thank you.

20 All right. I am going to aim to be back here by 5:00  
21 to render my decision on this. And then the remainder of the  
22 Agenda will commence tomorrow morning at 9:30. So I will see  
23 you at five o'clock. Thank you.

24 (At 4:31 PM, recess taken.)

25 (At 5:08 PM, proceedings reconvened.)

1           THE COURT: Good afternoon, and thank you for your  
2 patience. I am going to make my oral rulings on the Mediation  
3 Report and the remaining procedural motions.

4           Just before I do that, Judge Dein has graciously  
5 offered to address the discovery issues after I've made my  
6 rulings, so that if the people who are involved in the  
7 discovery motions wouldn't otherwise be coming back tomorrow  
8 morning, they won't have to. So that's what we're planning to  
9 do.

10           And thank you, Judge Dein, for that.

11           Okay. This is not short, but it's necessary.  
12 Neither was the argument. So I will now make my oral rulings  
13 on the matters covered by the Mediation Report and the related  
14 procedural motions.

15           As to the Mediation Report -- that is, the Amended  
16 Report and Recommendation of the mediation team, which is  
17 docket 10756 in case 17-3283, for the sake of clarity and  
18 brevity, I'll adopt the defined terms used by the mediation  
19 team in that report and its exhibits.

20           The Court has carefully considered the Report, the  
21 written responses to the Mediation Report, and the arguments  
22 advanced by parties today. For the following reasons, the  
23 Court will approve and enter the mediation team's Proposed  
24 Orders attached as Exhibits One and Two to the Mediation  
25 Report, subject to certain limited modifications.



1 First, the Court will add language providing that  
2 parties in interest may seek relief from the stays imposed by  
3 these Orders upon a showing of good cause. The Court reserves  
4 the right to deny any such application summarily, so don't get  
5 too excited about this. And make sure if you invoke it, you  
6 do it truly for a good reason.

7 Second, with respect to what the Mediation Report  
8 refers to as conflicts motions, the Court will modify the  
9 deadline to file such motions as suggested by Judge Houser,  
10 such that parties will have until 15 days after the later of  
11 the First Circuit's ruling on the ERS Section 926 appeal and  
12 this Court's ruling following the preliminary hearing on the  
13 Lift Stay Motions.

14 The Order will also be amended to provide that the  
15 Court will entertain timely extension motions with respect to  
16 that deadline on a showing of good cause. Again, the Court  
17 reserves the right to deny such extension motions summarily.

18 Third, the Court will modify the stay of future  
19 adversary proceedings and contested matters relating to the  
20 Amended Plan of Adjustment to make clear that parties in  
21 interest retain their rights to initiate contested matters via  
22 timely objections to the Amended Plan of Adjustment and the  
23 Disclosure Statement. The Court reminds the parties in this  
24 connection of its inherent right to manage the sequence and  
25 timing of litigation before it.

1               Fourth, the final Revenue Bonds Scheduling Order will  
2 be modified to reflect the changes to the Lift Stay Motion  
3 schedule that the Court made subsequent to the filing of the  
4 Mediation Report; that includes moving from March 5th to April  
5 2nd and the related changes.

6               Next, the Court will expand the description of the  
7 topics that the parties to the Lift Stay Motions will be  
8 expected to address in a meet and confer following any ruling  
9 on the Lift Stay Motions preliminary hearing matters to  
10 include consideration of how best to resolve outstanding  
11 issues in the revenue bonds adversary proceedings, as well as  
12 to address discovery and logistics in connection with a final  
13 Lift Stay hearing.

14              This meet and confer should also include coverage of  
15 whether and to what extent the targeted summary judgment  
16 motion practice remains necessary. And as to that, the  
17 provision for targeted limited summary judgment motion  
18 practice on the causes of action identified in the mediation  
19 team's Proposed Order will be maintained.

20              And the Court does not intend to entertain at this  
21 stage such motion practice going beyond those boundaries, nor  
22 does the Court expect to entertain at this stage such motion  
23 practice that is shown to have material contested factual  
24 underpinnings.

25              The litigation on the revenue bond adversary

1 proceedings will be otherwise stayed pending further order of  
2 the Court. So that means the motions to dismiss will be  
3 stayed, and don't have to be further briefed until further  
4 order of the Court.

5 Summary judgment opposition premised on arguments  
6 that the particular causes of action upon which judgment is  
7 being sought have not been pleaded adequately is not precluded  
8 in this connection.

9 So as to the schedule for that motion practice,  
10 motions and opening briefs, March 27th. Opposition, April  
11 24th. Replies, May 15th. And subject to change, because I  
12 didn't clear this with the scheduling people, but I will aim  
13 for argument in New York on May 27th at 2:15 in the afternoon.

14 Let's see. So subject to these modifications, the  
15 Court is satisfied that the schedules proposed by the  
16 mediation team in the Mediation Report allow for contested  
17 matters and adversary proceedings that are pending before the  
18 Court to progress with respect to important disputed issues  
19 raised in connection with revenue bonds in these Title III  
20 cases, including critical gating issues relating to the  
21 Amended Plan of Adjustment proposed by the Oversight Board.

22 The Court concurs in the mediation team's conclusion  
23 that resolution of these issues sooner rather than later will  
24 aid the Court in reviewing and adjudicating disputes with  
25 respect to the Proposed Plan of Adjustment, and aid the

1 mediation team and the parties in their ongoing efforts to  
2 resolve issues relating to the Proposed Plan.

3 As recommended by the mediation team, the Court will  
4 allow the current ERS Scheduling Order, which is docket entry  
5 number 10728, to remain in effect pending the submission of  
6 the proposed revised scheduling order for ERS.

7 The Court will hold off on the DRA Final Order  
8 pending revisitation by the parties to that order, pursuant to  
9 the order that was entered by Judge Dein last night. I will  
10 await further word on what the parties want to do on that.

11 The Court will set aside the interim GO-PBA Order and  
12 stay the GO-PBA litigation matters without prejudice to  
13 disclosure statement and confirmation-related litigation that  
14 may properly relate to issues that were raised in the stayed  
15 matters.

16 I will now address more specifically certain issues  
17 and objections raised by the parties with respect to the  
18 Mediation Report's proposals concerning the litigation of  
19 revenue bond and GO-PBA issues. To the extent any objections  
20 are not specifically addressed in these remarks or in the  
21 orders that will be entered by the Court, including parties'  
22 premature objections to the substance of the Disclosure  
23 Statement and the Amended Plan, such objections are overruled.

24 I want to start by addressing issues that Mr. Hein,  
25 in particular, has raised in connection with the mediation

1 process. Mr. Hein has renewed in his submission, and to some  
2 extent in remarks today, objections that he has raised on  
3 prior occasions concerning the rights of parties to  
4 participate in mediation, the confidentiality of mediation,  
5 and parties' access to transcripts of mediation sessions and  
6 of hearings held by the Court.

7 His objections are overruled in their entirety for  
8 the following reasons. To begin with, individual investors  
9 are not categorically excluded from the mediation process.  
10 Nothing prevents Mr. Hein or other individual investors from  
11 advocating their positions and seeking to participate in  
12 negotiations on the issues that are taken up in the mediation  
13 process.

14 The Court, of course, cannot guarantee that any  
15 particular party will succeed in its efforts, or be permitted  
16 to participate in every single session or phase of mediation,  
17 but parties in interest who are willing to contribute  
18 constructively to the mediation process are welcome to reach  
19 out to the mediation team. And mediation is not restricted to  
20 particular favored parties.

21 The mediation process is also necessarily a  
22 confidential one, unlike litigation which occurs on the public  
23 record. Not every issue can or should be litigated to a full  
24 resolution. Progress in these cases requires some level of  
25 compromise. And those compromises are best achieved in a

1 confidential forum that allows parties to candidly discuss  
2 their interests in aid of negotiated resolutions without fear  
3 of jeopardizing their litigation strategies if the  
4 negotiations fail.

5 That confidentiality is not prejudicial to Mr. Hein's  
6 rights. To the contrary, Mr. Hein and any other affected  
7 party in interest can object to any proposal that ultimately  
8 results from the confidential mediation process. His  
9 objections and request for relief have received and will  
10 continue to receive the Court's due consideration.

11 Mr. Hein's request for immediate free access to  
12 transcripts of the litigation proceedings has been considered  
13 carefully and is denied. Judicial Conference policy  
14 precludes the immediate disclosure of hearing transcripts,  
15 except to purchasers of those transcripts, or via terminals  
16 located physically in the District of Puerto Rico Clerk's  
17 Office. Pursuant to Judicial Conference policy, transcripts  
18 are made available through the National ECF Internet  
19 Electronic Access System after 90 days.

20 And finally, the Court remains unpersuaded that a  
21 limited small bondholder committee is necessary at this  
22 juncture.

23 I now will address the GO-PBA litigation stay issues.  
24 Several parties have objected to the Mediation Report's  
25 recommendation that the Court's Interim GO-PBA Order be set

1 aside, and that the GO-PBA litigation matters, including the  
2 UCC priority objection, be stayed pending the Court's  
3 consideration of the Amended Plan of Adjustment. The  
4 objections are overruled.

5 The Court's determination regarding a stay of the  
6 GO-PBA matters is guided by consideration of the economical  
7 use of party and judicial resources, the hardship resulting  
8 from not staying a proceeding, and the potential prejudice to  
9 parties if the stay is granted.

10 And for these elements, I refer you to  
11 *Villafañe-Colon v. B Open Enterprises, Inc.*, 932 F.Supp.2d  
12 274, 280, (D.P.R. 2013).

13 Here the proposed stay represents the most economical  
14 use of resources. The Amended Plan of Adjustment has been  
15 filed on behalf of the Commonwealth, ERS and PBA. Many  
16 parties clearly have objections to the proposal put forward by  
17 the Oversight Board, and it will doubtless be the subject of  
18 vociferous objections and potentially contentious litigation  
19 in connection with the Disclosure Statement and confirmation  
20 motion practice.

21 However, the Oversight Board is the only party  
22 empowered by PROMESA to propose plans of adjustment, and the  
23 Amended Plan of Adjustment is the means that the Oversight  
24 Board has chosen to propose to resolve the Title III cases of  
25 the Commonwealth, ERS and PBA. Whether this proposed amended

1 plan and the settlement of GO-PBA issues that are embedded in  
2 it will pass scrutiny is an issue for another day. But it is  
3 not prudent to continue litigating GO-PBA issues that will be  
4 resolved if the Plan of Adjustment is ultimately confirmed.

5           The Court further finds that the hardship resulting  
6 from continuing litigation is significant. There is only one  
7 proposal on the table that would potentially provide a means  
8 by which the Commonwealth, PBA and ERS can adjust their debts  
9 and emerge from the Title III process. That proposal rests on  
10 settlement of certain of the GO-PBA issues. Requiring  
11 resolution of those issues judicially would likely disrupt the  
12 deal and send parties back to the drawing board, potentially  
13 placing the Commonwealth, PBA and ERS in a worse position than  
14 they're in.

15           The parties objecting to the stay have not  
16 demonstrated a countervailing risk of prejudice. They retain  
17 their rights to object to the Amended Plan of Adjustment, and  
18 they also have the opportunity to accept the proposed  
19 settlement, and if the Plan is confirmed, receive the  
20 distributions contemplated thereunder.

21           The UCC's argument that certain constitutional debt  
22 limit issues will arise in the context of post confirmation  
23 avoidance action litigation is also not persuasive.  
24 Confirmation of a plan that contains a negotiated resolution  
25 of certain issues is not necessarily unwise simply because the



1 Court may ultimately have to decide those issues in the  
2 context of post confirmation litigation. There is no  
3 certainty that litigation will, in fact, ultimately address  
4 the debt limit issues. And if it does -- that's as an  
5 example. If it does, it does not necessarily mean that the  
6 Title III debtors would not have received a benefit from the  
7 negotiated resolution of those issues with respect to other  
8 creditors.

9           The Court has previously rejected the argument that  
10 dissenting parties in interest may exercise a veto over  
11 PROMESA debtor proposed settlements by pursuing claim  
12 objections, and the Court finds no proper basis for  
13 reconsidering that determination now.

14           The Amended Plan of Adjustment represents the  
15 Oversight Board's attempt to settle key disputed issues, and  
16 the Court will stay the GO-PBA litigation that seeks  
17 adjudicated resolutions of those issues pending consideration  
18 of and pending consideration in connection with, as necessary,  
19 the Amended Plan of Adjustment.

20           I turn now to the provision of the Proposed Order  
21 that stays future contested matters and adversary proceedings.  
22 The UCC has objected to the proposed language contained in  
23 paragraph five of the Proposed Order that is attached as  
24 Exhibit Two to the Mediation Report. That provision would  
25 stay new adversary proceedings and contested matters that

1 "Address issues being settled under the Amended Plan," or that  
2 duplicate other stayed issues.

3 As I think I mentioned during our colloquy, the Court  
4 understands that the intent of this provision is to ensure  
5 that all litigation concerning the Amended Plan of Adjustment  
6 is channeled into preexisting litigation pathways, such that  
7 parties do not unnecessarily commence parallel matters in an  
8 uncoordinated manner. And this is an appropriate goal.  
9 Accordingly, the objection is overruled.

10 And as noted earlier, the Court will include the  
11 provision with appropriate changes to reflect that parties are  
12 allowed to interpose objections to the Disclosure Statement  
13 and/or Plan.

14 Legislative approvals and the lack of government  
15 support have also been a topic of objections and discussion  
16 today. The Court overrules the objections to the proposed  
17 scheduling that are premised on the current lack of  
18 legislative and executive branch approval of certain measures  
19 contemplated by the Amended Plan of Adjustment.

20 Section 314(b)(5) of PROMESA provides that, for a  
21 plan to be confirmed, "Any legislative, regulatory or  
22 electoral approval necessary under applicable law in order to  
23 carry out any provision of the Plan has been obtained, or such  
24 provision is expressly conditioned on such approval." That's  
25 48, United States Code Section 2174(b)(5).

1           The factual issues of whether legislative approvals  
2 have been obtained or will readily be obtained is not before  
3 the Court today, and to the extent those issues intersect with  
4 Plan confirmation issues, I have no doubt that parties will  
5 bring them to my attention at the appropriate time. However,  
6 the Oversight Board has the statutory authority to propose  
7 plans of adjustment, and the Court does intend to allow the  
8 process for consideration of its Amended Plan to play out,  
9 because the Court is persuaded that doing so will maximize the  
10 near term potential for reaching a confirmable adjustment plan  
11 structure under which Puerto Rico can continue to move  
12 forward.

13           I'll now address the monoline insurers' request to  
14 stay the revenue bond adversary proceedings and related issues  
15 regarding the summary judgment motion practice. The monoline  
16 insurers have objected to moving forward with the revenue bond  
17 adversary proceedings at all in light of the issues raised in  
18 the Lift Stay Motions. They have also argued that the  
19 schedule and sequencing of summary judgment litigation in the  
20 final Revenue Bonds Scheduling Order is contrary to their due  
21 process rights.

22           The due process objection is unfounded, and the Court  
23 concludes that moving forward with coordinated stay relief and  
24 targeted merits determinations is an appropriate use of  
25 available resources, particularly when conjoined with a stay

1 of the motion to dismiss practice.

2           The Court is persuaded that the mediation team's  
3 short list of claims that may be the subject of early summary  
4 judgment motions is appropriately narrow and focused on legal  
5 issues such that litigation will be an efficient use of  
6 resources. While the Court does not yet have the benefit of  
7 full briefing on those issues, they appear potentially suited  
8 to adjudication without extensive discovery, and the Oversight  
9 Board's counsel has represented that they will be cued up on  
10 purely legal grounds. If any are cued up in a way that  
11 requires extensive discovery, they most likely will be put on  
12 hold or on a different track.

13           Resolution of those issues that can be decided on  
14 legal grounds will resolve key disputes that could affect, for  
15 better or worse, the prospect of the Proposed Amended Plan of  
16 Adjustment. The sequencing of litigation in the manner  
17 contemplated by the Final Revenue Bonds Scheduling Order does  
18 not conflict with the monoline insurers' due process rights.  
19 The Court has inherent authority to manage the litigation  
20 before it and will provide full opportunities to the parties  
21 to be heard as issues are taken up.

22           The Court has discretion to sequence litigation in an  
23 efficient manner, including scheduling matters to prioritize  
24 addressing purely legal matters that may render other  
25 litigation unnecessary. Furthermore, as the monoline insurers

1 acknowledge in their papers and have argued today, Federal  
2 Rule of Civil Procedure 56(d), made applicable here through  
3 Bankruptcy Rule 7056, provides a safety valve for claimants.  
4 Nothing in the Final Revenue Bonds Scheduling Order will  
5 deprive them of access to that safety valve.

6           The monoline insurers will have the ability to argue  
7 that they have been unable to present essential facts in their  
8 opposition to any motion for summary judgment. If the Court  
9 is persuaded that discovery is necessary to meet or present  
10 material arguments, appropriate discovery opportunities will  
11 be provided at appropriate times if the summary judgment  
12 motion practice goes forward on those particular issues.

13           I will now address the stay of the underwriter  
14 litigation, which is adversary proceeding 19-280. The  
15 defendants in that adversary proceeding who refer to  
16 themselves collectively as the "Adversary Defendants" have  
17 argued that the adversary proceeding against them should be  
18 unstayed to allow them to file motions to dismiss with respect  
19 to defenses that are unrelated to the Amended Plan of  
20 Adjustment.

21           The issues enumerated by those defendants include  
22 whether certain causes of action are available under Puerto  
23 Rico law, whether claims are barred by Section 546(e) of the  
24 Bankruptcy Code, the applicability of the doctrine of in pari  
25 delicto, and other unspecified defenses. The adversary

1 defendants argue that those issues may be dispositive of the  
2 entire litigation against them.

3           The Court declines to lift the stay with respect to  
4 Adversary Proceeding 19-280. The issues that the adversary  
5 defendants want addressed via dispositive motion practice are  
6 not ones that are critical to the Plan confirmation process.  
7 Thus, there is no need to dedicate the parties' and the  
8 Court's limited resources to resolving those issues at this  
9 juncture. Those issues can await the resolution of the  
10 confirmation process.

11           And now I'll turn to the arguments by the UCC and the  
12 DRA parties that the Final Revenue Bond Scheduling Order  
13 should be amended to address additional claims. The Court  
14 declines to expand the claims subject to the contemplated  
15 summary judgment motion practice at this time.

16           The Order that the Court will enter will provide for  
17 a meet and confer process, following a preliminary ruling by  
18 the Court on the monoline insurers' motions for relief from  
19 the automatic stay. That will allow the parties to consider  
20 whether there are issues or arguments that have been mooted,  
21 or whether the issue list should be modified in light of the  
22 Court's determinations, as well as to discuss their respective  
23 views as to the most efficient procedural vehicles for those  
24 disputes.

25           To the extent that it appears appropriate, following

1 | these discussions, to expand the scope of summary judgment  
2 | motion practice or otherwise amend the litigation schedule,  
3 | parties in interest may make an application to the Court.

4 |         As to the topic more generally, of the DRA parties'  
5 | participation in the revenue bond-related litigation, the DRA  
6 | parties have reiterated their concerns that resolution of the  
7 | issues covered by the Final Revenue Bond Scheduling Order may  
8 | prejudice their rights by resolving overlapping issues  
9 | relating to rights to certain revenues.

10 |         Thus, the DRA parties have objected to the Final  
11 | Revenue Bond Scheduling Order to the extent that they do not  
12 | have the right to participate in that litigation to the same  
13 | extent as other parties in interest. The intervention and  
14 | litigation participation issues raised by the DRA parties have  
15 | been addressed by Judge Dein in the context of their motions  
16 | to intervene in the Lift Stay Motions in an Order that was  
17 | filed last night. Their application to participate in the  
18 | revenue bond adversary proceedings will also be addressed by  
19 | Judge Dein separately.

20 |         As to the conflicts issue and motion practice, the  
21 | monolines objected to the provision setting a deadline for  
22 | filing motions seeking relief to address alleged conflicts of  
23 | interest arising from the Oversight Board and the Government  
24 | of Puerto Rico acting on behalf of both the Commonwealth and  
25 | HTA. To address the practical concerns raised by the

1 monolines and, in accordance with the recommendation by  
2 Judge Houser, the final order that I will enter will, as I  
3 indicated before, provide some additional time by  
4 incorporating the formula that gives 15 days after the later  
5 of the two critical events.

6           The Court rejects the monolines' assertions that  
7 setting a deadline on motions violates their rights to due  
8 process. The Court has inherent power to manage the docket  
9 and implement appropriate scheduling orders, and the Court is  
10 satisfied that the deadline contributes to the overall goal of  
11 making progress in these Title III cases.

12           As I said, I will include general provisions  
13 permitting a request for extension for showing of good cause,  
14 and I reserve all my rights with respect to those sorts of  
15 applications.

16           As to the proposed stay of Ambac's 2004 motion  
17 concerning PRIFA rum taxes, that motion will be denied without  
18 prejudice, but it can be renewed in connection with plan  
19 confirmation discovery. And the schedule recommended by the  
20 Oversight Board contemplates confirmation issue related  
21 discovery beginning June 30th of this year.

22           That scheduling provision permits appropriate  
23 discovery upon renewal of the motion, and this way Ambac and  
24 the other monolines will have an opportunity to consider  
25 litigation developments in connection with the revenue bond



1 issues in formulating any renewed requests.

2           Accordingly, the pending 2004 motion regarding PRIFA  
3 rum taxes is denied without prejudice to renewal on a  
4 timetable consistent with the schedule that will be  
5 established for the litigation issues relating to the Amended  
6 Proposed Plan of Adjustment if the Court approves the proposed  
7 Disclosure Statement. And if the Disclosure Statement is not  
8 approved, we'll have other rescheduling to do.

9           So let's see. The UCC filed an objection to the GDB  
10 Proof of Claim, and the DRA parties requested that that be  
11 allowed to go forward prior to the hearing on the Disclosure  
12 Statement. They have asked that one single issue, whether the  
13 UCC has standing to pursue that objection, proceed prior to  
14 the Disclosure Statement hearing. The Court declines to  
15 modify the Revenue Bond Scheduling Order in that respect.

16           The issue that the DRA parties seek to have the Court  
17 resolve in the near term is not one that is essential to the  
18 expeditious consideration of the Amended Plan of Adjustment,  
19 nor have the DRA parties identified any prejudice that they  
20 will suffer as a result of the continued stay of that  
21 objection. The merits of the objection, including the  
22 question of the UCC's standing, can be addressed following the  
23 Court's resolution of plan confirmation matters.

24           The Amended Plan of Adjustment proposes treatments to  
25 dozens of classes of claims, and the DRA parties have not

1 demonstrated that adjudication of the validity or invalidity  
2 of their particular claims has to precede evaluation of a  
3 Disclosure Statement. And if the Court were to rule early  
4 that the UCC does have standing, that's not going to solve the  
5 DRA parties' problems with respect to that objection.

6 So now I turn to the related motions, the UCC's  
7 scheduling motion on its priority related objection to General  
8 Obligation bonds. That motion is docket entry number 10754.

9 That scheduling motion is denied without prejudice  
10 because we will proceed in the context of plan-related  
11 litigation as the most efficient use of the parties'  
12 resources. And if the Plan is not confirmed, the UCC can  
13 renew that motion.

14 Now, the Disclosure Statement Scheduling Motion,  
15 which is docket entry 10808. For substantially the reasons  
16 that I have explained, the Court believes that it is  
17 appropriate to give the Oversight Board the opportunity to be  
18 heard with respect to its Amended Plan of Adjustment, and  
19 consideration of the proposed Disclosure Statement is a  
20 preliminary step in that process.

21 The bulk of the arguments in opposition to the  
22 scheduling motion concern the anticipated content of the  
23 Disclosure Statement or the actual content of the Disclosure  
24 Statement and Amended Plan of Adjustment, and to the fact that  
25 those were not filed contemporaneously with the scheduling

1 motion. But that scheduling motion requests only limited  
2 relief.

3 The proposed Disclosure Statement and Plan have now  
4 been filed, and substantive concerns about the contents of the  
5 Disclosure Statement and Plan will be addressed at the  
6 appropriate time. The Court will, however, amend the proposed  
7 schedule to provide some additional time for the parties'  
8 consideration of objections to the proposed Disclosure  
9 Statement.

10 So the motion is granted. The Court will make  
11 certain revisions to the Proposed Order.

12 First, I will correct a scrivener's error in the  
13 Proposed Order to make it clear that the Disclosure Statement  
14 hearing will be held in connection with the June Omnibus  
15 hearing scheduled for June 3rd and 4th, and not be held today,  
16 because that would be kind of impossible.

17 Second, the objection deadline will be moved from  
18 April 17th to April 24th to give the parties a little  
19 additional time to review the Disclosure Statement and  
20 associated documents.

21 Third, the Court will make it clear that the purpose  
22 of the hearing is not restricted purely to the adequacy of the  
23 Disclosure Statement, but that it will also encompass the  
24 voting and solicitation procedures proposed by the Oversight  
25 Board in its motion seeking approval of the disclosure

1 statement and related procedures.

2           And finally, in terms of scheduling, the proposed  
3 confirmation hearing period of October 13th to 23rd is not  
4 feasible for me. And I have to be there. So what I will do  
5 is block off the following dates for a potential confirmation  
6 hearing pending, of course, approval of the Disclosure  
7 Statement. October 21st through 23rd, that's a Wednesday to  
8 Friday. Then the following week, October 26th through 31st,  
9 so we can celebrate Halloween together. Then the -- I'm  
10 sorry. It's the following week. The week that includes the  
11 Omni and -- basically, it's the period of October 21st through  
12 November 6th, recognizing that we may need to take a break for  
13 the Omni.

14           And we probably won't be able to proceed on election  
15 day. So I'm not sure that I wrote precisely the dates, the  
16 specific dates I intended to, but that's the time frame. I  
17 will enter an Order on the docket that indicates that those  
18 are the dates that are reserved.

19           So thank you all for listening and for your patience  
20 with this lengthy recitation. And I will now turn the bench  
21 over to Judge Dein for discovery matters.

22           MR. DESPINS: Your Honor, just one clarification.

23           THE COURT: Yes, sir.

24           MR. DESPINS: We filed a 3013 motion yesterday so,  
25 therefore, it's not covered by future filings.

1 THE COURT: I know you did that yesterday so it  
2 wouldn't be covered by future filings.

3 MR. DESPINS: So what -- are you going to issue an  
4 order? How -- where does it fit is the question.

5 THE COURT: What I expected was that there may be  
6 argumentation in response to that motion, that it should be  
7 considered more contemporaneously with other confirmation  
8 matters than considered prior to the Disclosure Statement  
9 hearing.

10 I thought it would be only fair to give you an  
11 opportunity to reply to such argumentation. And at the April  
12 Omni I'll decide, at a minimum, when it will be decided, and  
13 we'll see where we are.

14 MR. DESPINS: Okay. Thank you, Your Honor.

15 THE COURT: Thank you.

16 Anything else?

17 (No response.)

18 THE COURT: Thank you, Judge Dein.

19 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I'm  
20 going to take a minute, and so people can leave --

21 THE COURT: Oh, anyone who wants to leave, can leave.  
22 Thank you very much. Safe travels. Be good. Be well.

23 MR. LAWTON: Thank you, Your Honor.

24 THE COURT: Breathe carefully these days.

25 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All

1 right. I'm taking a calculated risk to do discovery at the  
2 end of today. We'll see if this is going to pay off or not.

3 So I have been through the various pleadings, of  
4 which there have been quite a few. And I thought that it made  
5 the most sense actually, instead of just having argument,  
6 because I really do understand the parties' positions, that it  
7 made the most sense to actually just work off of the movant's  
8 Proposed Order, the last one. And why don't we deal with it  
9 sort of item by item.

10 I will tell you, I understand that there are  
11 arguments that things have been produced already that reach  
12 these issues. It's more helpful for me to deal with it in  
13 connection with specific requests, so you can say why you  
14 shouldn't be producing any more material, or you've already  
15 produced it.

16 I will give everybody a head's up that I am not  
17 inclined to allow the e-mail communications. I've read all  
18 the arguments on it. It has really not been persuasive to me.  
19 And as it now stands, just as a general statement, it seems to  
20 me that state of mind is not an issue. Individuals'  
21 understanding of things is not the issue.

22 No one is arguing ambiguity that's going to be  
23 straightened out by some e-mail that somebody sent someplace  
24 along the line. It is definitely more burdensome to do an  
25 e-mail search, and it's just not necessary, as far as I can

1 tell, to really understand the factual issues that discovery  
2 is limited to.

3 So you can try to argue me out of it, but it is late  
4 and that is my basic position. But that having been said, why  
5 don't we start -- so I'm dealing with document number 11958-1,  
6 which is the movant's latest revised Proposed Order. And I  
7 just want to do it sort of item by item, I guess starting with  
8 the flow of funds discovery with respect to HTA, the account  
9 opening documents.

10 I think the request is pretty self-explanatory. I'll  
11 hear the opposition, or at least the response to the request.

12 MS. MCKEEN: Your Honor, Elizabeth McKeen of  
13 O'Melveny & Myers on behalf of AAFAF.

14 With respect to account opening documents, I think  
15 our position is that given that we have said that we will  
16 provide the account statements going back to 2015 for each of  
17 the relevant accounts, the account opening documents are not  
18 going to necessarily have any additional information that  
19 would shed light on the relevant issues.

20 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
21 thought that these were designed to determine whether or not  
22 there were any restrictions on the accounts or otherwise  
23 specific instructions.

24 MS. MCKEEN: It's not clear to me that the documents  
25 that they've requested would actually contain information that

1 goes to that issue. I will say that with respect to these  
2 particular documents, many of them may significantly predate  
3 the 2015 time period, and many of them may simply not exist in  
4 the government's files anymore.

5           So to the extent we locate account opening documents  
6 that are in our possession, we would be willing to provide  
7 them, but given their sort of relative value, we don't believe  
8 it would be worthwhile to undertake an independent search for  
9 them or to delay the April 2nd hearing in an effort to  
10 aggregate all of them given -- given the likelihood that we  
11 may not be able to find many of them at all.

12           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
13 Well, I'm not talking about delaying. But how do you maintain  
14 these? Like when you say they predate, but -- do you maintain  
15 them by accounts?

16           I mean, it seems to me that the information that  
17 they're asking for is sort of the key information. How are  
18 these accounts created? What are the parameters on the  
19 accounts, or are there any special limitations?

20           MS. MCKEEN: So that's not something that is kept in  
21 any sort of central repository or place. So what we're having  
22 to do for each instrumentality is going instrumentality by  
23 instrumentality, account by account, to figure out who has  
24 what, where is it located and what's there.

25           And so in the process of doing that, we've been



1 identifying and producing account statements. And in  
2 connection with doing that, we can also see if the account  
3 operating documents are there, but they simply may not be,  
4 Your Honor.

5 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
6 All right. Who's -- anybody want to respond to that?

7 MR. NATBONY: Sure, Your Honor. Good afternoon,  
8 Judge Dein. William Natbony on behalf of Assured and the  
9 other monolines.

10 So what I'm hearing on that limited subject is I'm  
11 not sure what's there, I'm not sure what it says, and -- but  
12 maybe I'll look for it. So --

13 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Well,  
14 no. I got the, I'm definitely looking for it.

15 MR. NATBONY: Okay. So that's fine. I'm happy.  
16 But I think the short answer to the argument is that account  
17 statements are extremely different than account agreements,  
18 signatory agreements, restrictions that might be in account  
19 opening documents and agreements relating to those statements.

20 I mean, I get statements every day. They don't have  
21 the attached restrictions or potential signatory issues,  
22 indications of ownership, who has control, who has the ability  
23 to control over those accounts. Those are the kind of  
24 documents that we are seeking.

25 And when they are making the arguments that these

1 funds are in accounts where there is no interest, where  
2 they're controlled by Commonwealth, or not HTA, that's why  
3 they are relevant, Your Honor.

4 So I hear what they're saying. I think they should  
5 be able to look for them, produce what they have and work from  
6 there. And I think the same argument goes for the second  
7 bullet, Your Honor, with respect to account agreements, which  
8 I would think fall into that same category.

9 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So as  
10 I see it, though, the way we should do it is that this isn't a  
11 third party search right now. It's what's in your possession.

12 To the extent you're finding the documents, each  
13 account, you do need to provide the statements that -- or any  
14 other documents that reflect the information that is requested  
15 in these bulletins, the depository institution, the account  
16 holders, signatories, beneficiaries, and any restrictions as  
17 they've got -- as they've listed them.

18 So if you have a statement from the bank that's not  
19 an account opening document, but otherwise is in your file  
20 that confirms the terms, that should be produced. Okay?

21 MR. NATBONY: Thank you.

22 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All  
23 right.

24 MR. MAINLAND: Hello, Your Honor. Grant Mainland of  
25 Millbank on behalf of Ambac Assurance Corporation.

1 I just wanted to add in a few additional related  
2 issues on the account opening documents, particularly as they  
3 relate to PRIFA and CCDA. One of the issues that we're  
4 struggling with that is really relevant to these account  
5 opening documents that the account statements themselves do  
6 not address is really what are these accounts.

7 Now, one of the main theories of defense against our  
8 request for stay relief is it turns extensively on where any  
9 of the relevant money is located at any given time. Is it in  
10 the infrastructure fund? I'm overhearing counsel say it  
11 doesn't turn on that, but that really is on almost every page  
12 of their brief.

13 Their argument is, unless that money has been  
14 deposited in a certain place, then we don't have any claim to  
15 that; we don't have any lien on that. That runs through all  
16 of their arguments on the bond documents and the statutes.  
17 And that's a very central feature of how they're opposing our  
18 motions.

19 We don't know what these accounts are. We don't know  
20 what the pledge account is. We don't know what the transfer  
21 account is. We don't know what the holding fund is. That's  
22 CCDA alone. We don't know what the infrastructure fund is.

23 Is it a particular account? Is it a fund that  
24 consists of multiple accounts as they've explained the TSA  
25 itself is? They, in their own bank accounts analysis that

1 they provided in the course of mediation that's now been  
2 publicly disclosed, they talk about how the TSA is a  
3 constellation of a bunch of different accounts.

4 They've stated publicly that these individual  
5 accounts within TSA earn different rates of interest and that  
6 they're constantly trying to maximize that, all of which is  
7 totally uncontroversial, except that we don't have any  
8 visibility into it. And for all we know, when we're required  
9 to take on their say-so, that money is being commingled, that  
10 money is in accounts that are unrestricted.

11 And to just look at statements, that oftentimes --  
12 I'll take an example. There's just a Scotia Bank account. Is  
13 that the transfer account? Is that the pledge account? Is it  
14 a holding fund? Is it neither?

15 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So  
16 what do you have? You have lists and you have spreadsheets  
17 that identify all of the accounts that they've identified, so  
18 far as the accounts in which the money is being deposited.  
19 You have the Treasury letters, at least for some of them,  
20 which are the directions.

21 MR. MAINLAND: Sure. Well, so only with respect to  
22 CCDA, unless -- and I apologize if something came in as I've  
23 been traveling --

24 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN:  
25 You're jumping around.

1           MR. MAINLAND: -- that is more than that. But with  
2   respect to CCDA, there is a spreadsheet that identifies  
3   accounts, which we think is very helpful and is an important  
4   step in terms of trying to understand the constellation of  
5   these accounts.

6           But it will say, for example, again, Firstbank  
7   account. We have no idea how to tie this to these particular  
8   entities that exist under the -- sort of under the statutes  
9   and under the bond documents. And yet, those, in their  
10   theory -- now, of course we have a different opinion as to the  
11   legal significance of where the money is located, but that's  
12   -- put that to the side. To them, it matters a lot. And  
13   their argument is, if it doesn't go in this particular place,  
14   you're out of luck.

15           We need to know exactly where the money is, and in  
16   what kinds of accounts, and what kinds of restrictions are on  
17   those accounts. And that's why we've been asking for this  
18   information.

19           We also, I should say, have asked through letter  
20   writing, which I'm increasingly concerned about given the  
21   passage of time, you know, what are these accounts? Identify  
22   for us what the PRIFA Infrastructure Fund is. We're not  
23   getting answers for that. And so this, to us, seems like the  
24   most practical way of trying to get at that.

25           The only other thing I want to add here is that you

1 mentioned third-party discovery, or you alluded to it. We're  
2 sympathetic to the possibility that these are accounts that  
3 have existed for some time. And is it easy to run and track  
4 down any particular account opening document? Maybe not. I  
5 would think that it would be much easier for the banks  
6 themselves to locate that.

7 And we've raised that as a possibility. We didn't  
8 want to, on the eve of this hearing, start issuing third-party  
9 subpoenas, but given the passage of time, increasingly we're  
10 thinking that may be a fruitful path forward.

11 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Let  
12 me just ask you, before you continue, is it necessary to have  
13 this information, in your view, for all the accounts? Are  
14 there exemplar years? Are there specific, more limited  
15 accounts that you can identify that's worth further  
16 investigation?

17 MR. MAINLAND: I actually don't think it's a lot of  
18 accounts, though it's -- I'm obviously limited in my ability  
19 to understand what's really going on, because the window we've  
20 had to date remains pretty narrow.

21 What I would say is if -- let's take PRIFA as an  
22 example. If there are multiple accounts through which the  
23 money flows -- and their argument is, you know, your lien  
24 doesn't attach until it gets to point X. But we want to  
25 understand the flow, because we think there may be factual

1 details relating to how that money moves and any restrictions  
2 on it that -- that would be relevant to the existence and  
3 scope and attachment of our lien.

4 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
5 But it can't be every transaction and --

6 MR. MAINLAND: Well, what we're talking about here is  
7 account -- I actually don't think, and they haven't really  
8 fought us very hard on the notion that account statements  
9 themselves can be produced. They've made comments about the  
10 ability to produce every last one, but more or less have  
11 agreed that that's an appropriate scope of production.

12 I think account opening documents, if we are talking  
13 about a handful of accounts, and an account opening document  
14 or two or three for each one of those, that doesn't strike me  
15 as very burdensome. I think the issue is locating it. And  
16 frankly, they don't agree that it's relevant, but I think, you  
17 know, we shouldn't be forced to live with that.

18 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Well,  
19 let me ask you. Do you need the bank statements? Is that  
20 something that's worth their time finding? Or is it more  
21 important for you to get the bank account information and any  
22 limitations on the account?

23 MR. MAINLAND: We do need the account statements, and  
24 I think we have gotten many of them. We haven't gotten  
25 everything, and that remains incomplete. But I think it is

1 relevant to a number of issues, including lowest intermediate  
2 balance.

3           There are a lot of reasons why we need a sort of full  
4 set of account statements, but on these issues of the status  
5 of the accounts and any restrictions on them, we think the  
6 account opening documents are essential.

7           MR. NATBONY: May I, Your Honor?

8           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Not  
9 if you're going to say the same thing.

10           MR. NATBONY: Well, it's the same issue with respect  
11 to HTA, in the sense that there are different accounts. We  
12 don't know what all the accounts are. So if they're going to  
13 tell us that this one has no relevance, we have no way of  
14 knowing.

15           And this also goes to the issue of, we have Fund 278.  
16 We don't know what that is with HTA. We need to understand.  
17 So we do need the statements also, because we need to see  
18 where the money is going and why. So that's what the  
19 statements are going to be showing.

20           Because their argument is, you know, if the money  
21 comes in here, and goes there, and then goes there, and then  
22 goes there, that impacts who has a right to it. So we need to  
23 understand. And that's what Judge, I think, Swain recognized  
24 is, we need to understand the flow of funds. And it's the  
25 statements that show where the funds are flowing.



1 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So  
2 this is how I'm interpreting it. I think that you need to  
3 make a distinction though between your sort of ultimate damage  
4 claim, let me put it that way, and the flow claim.

5 Like you need to understand how the money flows right  
6 now for these gatekeeping issues, right? And then you can  
7 argue later what is the precise dollars, and which specific  
8 monies you're claiming an interest in. But I don't think that  
9 you need to get it that specific at this juncture.

10 MR. NATBONY: The one issue that I would raise with  
11 Your Honor is when you use the words "right now," because I  
12 believe that we have seen evidence, and what we've seen is  
13 that the flows have changed over time. So I think when you  
14 look at a time period, for instance, pre-clawback and  
15 post-clawback, I think we need to understand what the flow has  
16 been during that period of time, not just right now.

17 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
18 didn't mean to limit it to right now, but I am limiting it to  
19 not spending a whole lot of time looking for January's  
20 statement if you have February's and you have December's.

21 MR. NATBONY: I understand, Your Honor.

22 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
23 So that's why I was asking whether there are exemplar years or  
24 certain targeted accounts.

25 And I guess I will hear from you.

1 MR. MERVIS: Your Honor, Michael Mervis, Proskauer  
2 Rose, for the Oversight Board. I'll be very brief.

3 I actually thought Ms. McKeen agreed to look for  
4 account opening documents, so I actually think we've resolved  
5 that particular issue. But a few things were said, and I just  
6 want a level set.

7 One is, it's not for Your Honor, but since it was  
8 said, the characterization of what our argument is, that's not  
9 our argument. We did, in our papers, illustrate the flow of  
10 funds, as it's called for by the various statutes and  
11 agreements. And AAFAF has agreed to produce the documents  
12 that will demonstrate what actually happened. And if there's  
13 a variance between what the statutes and the agreements say,  
14 and if that has some legal relevance, we'll hear about it on  
15 April 2nd.

16 But to be very clear, our argument is based solely on  
17 the fact that there is -- there is one account for each of  
18 these three entities that matters. But we -- but again,  
19 Ms. McKeen agreed to look, and so we're going to look.

20 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.

21 MR. MERVIS: Secondly, I appreciate that they have  
22 questions, and I appreciate that they don't feel that they've  
23 got all the information they need. That's not surprising.  
24 We're in the midst of the production right now.

25 So as the production -- there will be -- and Ms.

1 Pavel's been down here for, what, four or five days with a  
2 team of associates looking for documents. Those documents  
3 will be produced. And if after that there are questions, we  
4 will answer them.

5 I know they have written letters, and we responded to  
6 some of the letters. And some, we haven't gotten to them yet,  
7 but we will not ignore them. I promise. If there are  
8 legitimate questions, we will answer them.

9 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So if  
10 I saw your scheduling correctly, you were aiming -- everyone  
11 is aiming for substantial discovery by March 16th?

12 MR. MERVIS: That's right, Your Honor.

13 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So  
14 within that context, I think you do need to get on answering  
15 questions.

16 MR. MERVIS: Agreed. And the only caveat I'll make  
17 to that is we may not know the answers the same day that we  
18 get the questions, but sure. Of course we'll answer  
19 questions.

20 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
21 So as I understand it, the government parties are going to  
22 produce the flow of fund discovery, to the extent they have  
23 them, with respect to subpart B? I'm not sure what -- so A,  
24 the account opening documents, et cetera, and the banking  
25 agreements.

1 I'm not sure what transmittal information means,  
2 which was the subpart C, such as payment vouchers and transfer  
3 activities. Reports for the period July 2016 to the present.  
4 I don't -- I'm not sure what that means, and I'm not sure if  
5 there's an objection, because I don't know what it means.

6 MR. MAINLAND: I'm happy to address that.

7 THE COURT: All right.

8 MR. MAINLAND: Transmittal information is really  
9 trying to deal with a situation where you look at an account  
10 statement and you see that money went from point A to point B,  
11 but often, these are accompanied by transmittal memoranda or  
12 what they've been referring to as disbursement detail  
13 memoranda. That would provide more details as to the nature  
14 of the transfer that's occurring.

15 So -- and I'll give a very specific example that  
16 potentially could have significant relevance to this  
17 proceeding, which is, if money is sent, for instance the  
18 lockbox agreement that they've disclosed, and that relates to  
19 how rum taxes apparently move, if money is sent to the credit  
20 of the infrastructure fund -- again, we don't really know what  
21 the infrastructure fund is, because we don't have much  
22 visibility into it, but that would have significant -- if the  
23 transfer itself is noted as being to the credit of PRIFA, that  
24 would be relevant.

25 They make generalized allegations of commingling

1 within the TSA. We're not required to sort of accept that on  
2 their say-so. We're entitled to explore, are there notations  
3 or other transmittal information that would indicate the  
4 nature of the transfer and restricted status of the money. So  
5 that's what we have in mind, Your Honor.

6 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So  
7 again, what I'm trying to balance here is I think you are  
8 entitled to discovery on understanding the flow in general,  
9 but that's not a specific -- you don't have time, nor do I  
10 think it's efficient, to be questioning each and every  
11 transaction over the last four years.

12 MR. MAINLAND: Well, that's an area where exemplar  
13 documents, I think, would work. The problem is we're not  
14 getting the level of detail that we need even with respect to  
15 exemplar documents.

16 So I think that's one where if there are -- and maybe  
17 there's a work-around, whether by stipulation or otherwise,  
18 that can represent that this kind of transfer is one that  
19 would typically occur in the ordinary course with respect to  
20 these rum taxes, the first 117 million going from the lockbox  
21 to the TSA.

22 What we need to understand is what is the nature of  
23 that transfer. And transmittal information is likely to shed  
24 a lot of light on that. Again, they, on multiple pages of  
25 their briefs, refer to these documents as -- I mean these

1 monies as entirely unrestricted. No strings attached. Pure  
2 commingling in a single, undifferentiated pot of money. It's  
3 totally at odds with what we've seen about how the TSA works  
4 in general.

5 And we're also not required to just accept that very  
6 blunt factual assertion in their papers. We need to  
7 understand it. We are willing to work on an exemplar basis to  
8 understand that better.

9 Can I -- go ahead.

10 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
11 think we're -- we can't go all at the same time.

12 Go ahead.

13 MR. NATBONY: Sorry. I think when we originally --  
14 we had split up between HTA and CCDA and PRIFA, so I  
15 apologize.

16 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
17 thought I did, too, but apparently not.

18 MR. NATBONY: The only thing I would add on with  
19 respect to HTA is the transmittal documents, the notations  
20 could describe the purpose of the transfer. It could also  
21 describe the ownership of the funds or whether there's a  
22 beneficial interest there.

23 I mean, and we've seen it on other documents where  
24 you've had notations that might say "owned funds" or --

25 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I'm

1 | sorry. I didn't hear your last word.

2 | MR. NATBONY: Owned funds.

3 | So to the extent there are notations, I mean, Your  
4 | Honor writes a check or anyone writes a check, you make a  
5 | notation as to purpose or what it's for, we think that those  
6 | are relevant to determining whether the monies, in fact, were  
7 | earmarked or had an interest as they allege or not.

8 | And it's really not a question of an undue burden,  
9 | because they haven't even come in and said anything that is  
10 | burdensome. These are documents that, if they have them, they  
11 | should be in one place. I mean, you keep your records and  
12 | your transmittals in one place, so I don't see what the burden  
13 | is.

14 | And if the question is that it's going to -- we  
15 | haven't heard any proof of burden. So, I mean, we'll take a  
16 | look through them.

17 | So, you know, exemplary, I mean, I don't really think  
18 | it's appropriate to have them pick and choose which one of  
19 | these transmittal slips they're going to send, because I don't  
20 | have an assurance that the ones with notations are the ones  
21 | that they're going to produce, so --

22 | HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
23 | So let me understand what kind of documents the government  
24 | does have or plans on producing. Oh, I'm sorry.

25 | MS. MCKEEN: So, Your Honor, I think this is an

1 example --

2 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
3 think we have Mr. Berezin.

4 MR. BEREZIN: Yes. Your Honor, if I could, just  
5 one comment on the transfer information. And I think it  
6 would be helpful to point this out. In terms of  
7 representative documents that could be produced, AAFAF has  
8 already produced withdrawal vouchers and transfer activity  
9 reports for year 2015 and part of 2016 that were very helpful  
10 and informative.

11 And if they would just produce the same types of  
12 documents for the rest of 2016 through the present, I think  
13 that would go a long way on this issue of transmittal  
14 information. And we could send the control numbers, the Bates  
15 numbers, to AAFAF so they understand exactly what documents  
16 we're talking about, although we may have listed them in our  
17 reply brief. I'm not sure.

18 MR. NATBONY: I believe it's from July 2016 to the  
19 present that they have not produced, Your Honor.

20 MS. MCKEEN: Your Honor, I think this is another  
21 example of a place where there's a disconnect between what  
22 they're seeking an order on and what we've agreed to do.  
23 AAFAF has agreed to produce direction letters, wiring  
24 instructions, and other similar content that exists in the  
25 files associated with transfers.



1           The only thing that we have refused to do is  
2   investigate the details of every single transfer reflected in  
3   five years worth of statements. We're not going to go kind of  
4   behind each transfer and accumulate more information. But to  
5   the extent we're finding documents like the ones Mr. Berezin  
6   just described, we're producing them.

7           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN:  
8   Okay.

9           MS. MCKEEN: So I think that should be sufficient,  
10   particularly in light of what counsel just said in terms of  
11   being willing to accept exemplars.

12          HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
13   So the question then becomes how fast can you do them?

14          MS. MCKEEN: We've had this in mind when we agreed to  
15   the March 16th substantial completion date. So as we are  
16   going through files to find account statements, we are also  
17   looking for these materials. If it exist in the files, it  
18   will be produced.

19          HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: And  
20   just, do you have a sense of how many accounts you're talking  
21   about for each of these?

22          MS. MCKEEN: I think there are over 20 accounts that  
23   are in play, but I don't have that number in front of me.  
24   That's the approximate order of magnitude.

25          MR. NATBONY: Across all three?

1 MS. MCKEEN: Correct, across all three entities.

2 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: And  
3 what's your response to the question about whether or not the  
4 individual banks should be involved in opening account  
5 documents, or documents that reflect any restrictions on use?

6 MS. MCKEEN: So with respect to those kinds of  
7 documents, we have already begun the process of speaking to  
8 banks to see whether these are available and can be provided  
9 with respect to particular accounts. I will note that some of  
10 these accounts were at GDB, so the odds of getting that is not  
11 likely to be very high.

12 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
13 But the other banks -- so you're taking on that responsibility  
14 then?

15 MS. MCKEEN: It's something that we have begun to  
16 undertake.

17 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All  
18 right. So this is how I see it. As I understand it then,  
19 everything that is listed in the flow of funds discovery  
20 that's in this sheet, the government has agreed to produce in  
21 subpart A --

22 MS. MCKEEN: Your Honor.

23 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: --  
24 for the first three categories. We haven't gotten to the  
25 official memoranda yet.

1 MS. MCKEEN: I guess the only gloss I would put on  
2 that is with respect to transmittal information, what we're  
3 doing is limited to what is in, you know, a centralized file,  
4 as opposed to going and looking for other backup information  
5 about individual transfers, if that makes sense.

6 When we are coming across these documents in the  
7 course of our search, we are producing things like  
8 disbursement detail. But the request, as it was originally  
9 drafted, was much broader than that.

10 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Yes,  
11 it was.

12 MS. MCKEEN: And I want to make clear we're not doing  
13 what request number two asks of us.

14 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All  
15 right. So that's why I wanted to start with the proposed --  
16 the revised requests, because I do think they are narrower  
17 than the original ones. So I think it's helpful to work off  
18 of this one.

19 Right now what I'm hearing, and I guess what's  
20 consistent with what I would order, would be that the opening  
21 account documents and restrictions on use information, the  
22 government is going to try to get that directly from the bank.  
23 The rest will be what's in the government's files as of now.

24 And you'll produce the account statements, the  
25 transmittal information, to the extent that you have it, and

1 the banking agreements, to the extent that you have it. All  
2 right?

3 So the opening account document information and  
4 restrictions on use, I think you need to go beyond what's in  
5 your files, and you need to see if you can get it from the  
6 bank. All right?

7 MS. MCKEEN: Yes, Your Honor.

8 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: She  
9 says she's giving it to you.

10 MR. NATBONY: All right.

11 MR. MAINLAND: I guess one detail that I think is  
12 important --

13 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Let  
14 her finish.

15 MR. NATBONY: That's appreciated. That's  
16 appreciated, Your Honor.

17 MS. MCKEEN: As long as I was up here, I thought I  
18 might go to the next bullet point in the Order.

19 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Go  
20 ahead.

21 MS. MCKEEN: This is another one where we were  
22 surprised to see this as the subject of this Motion to Compel.  
23 This is something we have agreed that we will search for and  
24 produce, to the extent it's in our possession. I don't think  
25 there's anything to discuss with respect to this.

1 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All  
2 right. And I've eliminated e-mail communications. I'm not  
3 ordering that at this time.

4 MS. MCKEEN: Similarly, under the heading  
5 appropriations discovery, we have already indicated that with  
6 respect to the first bullet, these are documents that we're  
7 searching for and we'll produce if we find them. And that is  
8 true of the official memoranda for this bullet as well.

9 So I think this just falls into the heading of there  
10 are a lot of things that are --

11 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So in  
12 this group, apart from the e-mail communications, do you have  
13 objections to any of them?

14 MS. MCKEEN: When you say in this group, you mean the  
15 appropriations discovery, sub B in the Order?

16 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN:  
17 Right.

18 MS. MCKEEN: No, Your Honor.

19 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
20 And what about with respect to number two?

21 MS. MCKEEN: So I think with respect to number two,  
22 these categories become a little less sort of specific. I  
23 think we are prepared for PRIFA and CCDA to produce exactly  
24 the same kinds of documents that we've just said that we will  
25 produce for HTA.

1 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So I  
2 think, as I read it, when I compare the words, I think they  
3 are the same. What it does do is just more clearly identify  
4 what kind of accounts?

5 MS. MCKEEN: I think that's true perhaps for the  
6 first bullet, but with respect to, for example, the second  
7 bullet where it talks about information about transfers, that  
8 is beyond what I just described previously. Again, that's  
9 something where we don't think, for a five-year period, we  
10 should be looking for information about all the transfers.

11 To the extent they have questions about a particular  
12 transfer, we're happy to meet and confer with them. But we  
13 want to just make sure that we're not being unnecessarily  
14 overbroad about what we're undertaking to do.

15 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All  
16 right. And I think what they are saying though is, we sent  
17 you a letter and we listed 12 transfers. Have you responded  
18 to that letter?

19 MS. MCKEEN: I believe we are in the process of  
20 investigating the letter. This was sent last Wednesday. Our  
21 opposition to their motion was due Friday. We are in the  
22 process of gathering all these documents and information. So  
23 it's an ongoing task.

24 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
25 don't understand why the lawyers need time to do these things.

1 The Court doesn't. Just teasing.

2 Okay. So I think that's the appropriate meet and  
3 confer, right? So as it says here, you want information  
4 requested in the movant's February 26, 2020, letter. That's  
5 the appropriate way to see if there is more detail about the  
6 transfer information, and I think that's the right way to go.

7 And if it becomes unduly burdensome and you can't  
8 work it out, let me know. But otherwise I'm just going to  
9 assume that you'll be able to appropriately limit your  
10 requests, and you'll do the appropriate homework to get the  
11 information.

12 MS. MCKEEN: Yes, Your Honor.

13 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.

14 MS. MCKEEN: I think the next two bullet points about  
15 communications fall in the category of what you said you would  
16 not allow.

17 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Yes.  
18 And that you have produced as -- and I think it's the last  
19 one, documents sufficient to show the term, scope and effect  
20 of purported restrictions.

21 MS. MCKEEN: Your Honor, I'm going to let Mr. Mervis  
22 speak to that.

23 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.

24 MR. MERVIS: Your Honor, Michael Mervis, Proskauer,  
25 for the Oversight Board.

1           So I think there's two points here, because I think  
2           there's some confusion about what -- I think there's some  
3           confusion on the monolines' part as to what the document that  
4           this request is based on actually is, but let me get to the  
5           good part first.

6           We've already agreed, and we did so on a meet and  
7           confer, to produce -- well, let me back up. Actually, I won't  
8           get to the good part first, because I think it does require  
9           some explanation.

10           So, Your Honor, I don't know if you have the exhibits  
11           to the monolines' Reply Brief handy. You probably do, because  
12           you were looking at the Proposed Order, but if you have it --  
13           and I can pass it up if you don't -- Exhibit D is the document  
14           that is at issue here.

15           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Can I  
16           have it?

17           MR. MERVIS: Yes. And the only concern I have, Your  
18           Honor, is whether I highlighted it. But you know what? Even  
19           if I did, it's not very much.

20           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Thank  
21           you.

22           MR. MERVIS: So, Your Honor, what this is, is this  
23           was a presentation that was created by the Oversight Board's  
24           professionals. In other words, not government officials who  
25           were dealing with the flow of funds back when these statutes



1 | were enacted, nor government officials who were dealing with  
2 | the flow of funds in the last few years. And it was prepared  
3 | for mediation, prepared by counsel, and listed as subject to  
4 | revision.

5 |           And there are line items, Your Honor, on pages eight,  
6 | nine and 10 that refer to accounts for, respectively, HTA,  
7 | PRIFA and the Tourism Company. And what it says in each of  
8 | those line items is that it -- at the far right-hand side, it  
9 | gives amounts and it says, I think, implied restricted --

10 |           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN:

11 | Right. Potential restrictions --

12 |           MR. MERVIS: Right. And if you look up and down the  
13 | pages, for all of -- and what's listed on these pages are  
14 | public corporations. And if you look up -- so in other words,  
15 | Commonwealth entities that are separate from the Commonwealth.

16 |           Now, if you look up and down the pages, for the most  
17 | part what you'll see is that almost all the money is in -- is  
18 | classified implied restricted. Not just for these three  
19 | entities, but for substantially all of them.

20 |           And page three of the presentation explains why that  
21 | is. It says it right in the presentation. It says the reason  
22 | that it was -- I can't recall, because I handed it to you,  
23 | Your Honor. I can't recall if it says "assumed" or "assumed  
24 | to be," but if you look, Your Honor, toward about a third of  
25 | the way down the page where it says public corporations,

1 | there's a few bullet points.

2 | HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN:

3 | Assumed to be unrestricted --

4 | MR. MERVIS: Yes.

5 | HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: --

6 | other than emergency funds and escalated federal funds --

7 | MR. MERVIS: Right. And then I think right below  
8 | that, it says "assumed to be restricted."

9 | HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN:

10 | Right.

11 | MR. MERVIS: And as I understand it, the reason for  
12 | that assumption is because these are public corporations that  
13 | are separate from the Commonwealth.

14 | Now, what does this have to do with the Lift Stay  
15 | Motion? The short answer is nothing, because the assumption  
16 | of restriction -- first of all, only one of the three accounts  
17 | has any of the funds that are at issue here, which is the  
18 | Tourism Company account. But the assumption is not based on  
19 | alleged security interests or alleged property rights of  
20 | bondholders. The assumption is based merely on the fact that  
21 | these are separate corporations.

22 | So that's the context, but let me get to the punch  
23 | line. We agreed, notwithstanding our view that this has  
24 | nothing to do with the motion, to produce the documents that  
25 | the Oversight Board's professionals relied upon in reaching

1 those restriction conclusions, and we will produce them.

2 We were asked if there was any explanatory memos or  
3 guides that guided this exercise in terms of those restriction  
4 classifications. And I checked, and the answer is no. There  
5 are no such documents. So I don't have anything to produce.

6 So short answer is, notwithstanding that this is  
7 irrelevant, we are -- we will produce the documents that they  
8 asked for. So I'm not sure what there is more to say. Maybe  
9 there is more to say. But I'll sit down unless Your Honor has  
10 any questions about what I just told you.

11 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So  
12 the way I -- the question that I had on this category was that  
13 they do specifically reference this document, but they do have  
14 a broader document sufficient to show the term, scope and  
15 effects of purported restrictions placed on CCDA and PRIFA  
16 related funds. So part of that, it seems to me, is account  
17 opening documents --

18 MR. MERVIS: Right, which we already talked about.

19 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: --  
20 which you're producing.

21 Part of it may be the other documents which you've  
22 produced with the Treasury directives or anything that tells  
23 you what you can and can't do with the funds. But I didn't  
24 know whether you had a concern about this description,  
25 assuming that the summary of cash restriction analysis was

1 limited to what you've agreed to produce.

2 MR. MERVIS: No, Your Honor, I don't, because, as I  
3 just said, we'll produce the documents that the Oversight  
4 Board's professionals relied upon. And as far as the rest of  
5 it goes, my understanding is that everything that we've been  
6 talking about up until now would contain such restriction  
7 information, assuming it even exists.

8 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.  
9 Thank you.

10 MR. MAINLAND: I have a few things, but I really  
11 wanted to focus on that cash restriction analysis piece. In  
12 particular, with respect to the Tourism Company, though I  
13 think it's relevant to all of them. But I'm sort of  
14 scratching my head at the notion that 135 million dollars is  
15 sitting at the Tourism Company.

16 They're apparently acknowledging that those are hotel  
17 taxes, i.e., the flow of money that secures the CCDA bonds,  
18 and they're saying it's somehow irrelevant to our Lift Stay  
19 Motion.

20 One of our -- in fact, our threshold argument is that  
21 the Commonwealth lacks equity in that money, and that it's not  
22 necessary to an effective reorganization. They, themselves,  
23 are saying in their own cash restriction analysis that this is  
24 unavailable to be used in a Commonwealth Plan. How could that  
25 not be directly relevant to our Lift Stay Motion?

1                   And to hear counsel sort of provide an unsworn  
2 explanation as to what all this means is really not -- it's  
3 not how discovery is supposed to work. And all of these  
4 representations just raise more questions than they answer.

5                   We certainly don't understand what the PRIFA money  
6 is. Are those rum taxes? Are they not rum taxes? If they're  
7 restricted, why are they restricted?

8                   If they're just going to say, well, they're  
9 restricted because they're at another entity, that's an  
10 interesting concept that we would need to explore a little bit  
11 more, again with respect to our 362(d)(2) argument that they  
12 lack equity in the property. But there's so much we don't  
13 know about this. And just to have them say, we are agreeing  
14 to give you documents that our professionals relied upon,  
15 except they didn't really rely upon documents so we have no  
16 documents to give you, but here, I'm a lawyer and I'll stand  
17 up and explain what it really means, that's not how this is  
18 supposed to work.

19                   So a 30(b)(6) at a minimum. If there are no  
20 documents, there are no documents. But this is not a random  
21 cash restriction they put together. Clearly some thought went  
22 into this.

23                   HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I'm  
24 not going to get into part of the fight, but I think they have  
25 agreed to produce the documents. And I think part of this

1 Motion to Compel, which was entirely appropriate, is a timing  
2 issue.

3 MR. MAINLAND: Uh-huh.

4 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So I  
5 think it was appropriate for the movants to -- the original  
6 requests were quite broad. I think it's been great that you  
7 focused on the requests that you really need, but I think that  
8 AAFAF and the Board need to produce the documents. So I'm not  
9 sure there's a fight over this one.

10 MR. MAINLAND: I'm not sure what those documents will  
11 be and whether there will really be any, but I would say that  
12 even one thing -- and I guess we could talk about 30(b)(6)  
13 depositions more generally, but I am certain that whatever  
14 they produce, if they produce anything, will raise more  
15 questions than it answers, just based on what I've already  
16 heard about this document.

17 So I think we're going to need to understand some of  
18 these documents to make any sense of them.

19 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So I  
20 am going to allow you to have 30(b)(6), I will allow you to  
21 meet and confer, but it has to be limited to the facts that  
22 are in dispute. And the facts are really the factual  
23 questions about money coming in. Where does it come from?  
24 Where does it go generally? What's the structure?

25 And they're allowed to understand that, and they're

1 allowed -- and you need to prove it to them, not just a lawyer  
2 saying it, right?

3 So you can ask about the documents that are produced,  
4 but I'm going to assume that you are not going to waste a  
5 30(b)(6) deposition on a specific transfer that you can't  
6 figure out.

7 MR. MAINLAND: No, unless, of course --

8 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: This  
9 is going to be about the structure of the financial  
10 arrangements. I don't know how else to put it.

11 MR. MAINLAND: Okay. We'd obviously reserve the  
12 right to ask about a specific particular transfer,  
13 particularly with an eye to, is this an exemplar transfer?  
14 Can we understand how these transfers work? Not go through  
15 years of transfers. Obviously, we wouldn't waste anyone's  
16 time with that.

17 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: And  
18 I'm also going to strongly suggest that, to the extent that  
19 you have specific transfers that you want them to know about  
20 for a 30(b)(6) deposition, you give them some advance notice  
21 of it --

22 MR. MAINLAND: Of course.

23 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: -- so  
24 they have some idea.

25 MR. MAINLAND: We've already attempted to do that in

1 the form of 30(b)(6) notices, but we're, of course, having a  
2 meet and confer around the scope of that.

3 Just two other quick things, and then I'll hand it  
4 back to Mr. Natbony. On the disbursement, I hate to go back  
5 to an area where we mostly had an understanding, but with  
6 transmittal information or disbursement detail, they have  
7 already produced some information to that effect, which we  
8 appreciate.

9 What we're struggling with is the documents. The  
10 disbursement detail documents that they have produced, while  
11 it contains some information relating to transfers, it doesn't  
12 have key information that would enable us to test the premise  
13 or explore whether these documents were truly commingled or  
14 whether they were segregated in some sense or restricted in  
15 some sense.

16 They, themselves, back during the summer when our  
17 PRIFA motion was stayed pursuant to the general stay of  
18 litigation, one discovery inquiry we were allowed to ask, and  
19 AAFAF answered it, was whether there was transmittal  
20 information relating to the transfers of the rum taxes. And  
21 the answer was yes.

22 When you look at the lockbox agreement, the lockbox  
23 agreement provides that the first 117 million shall be  
24 transferred to the TSA to the credit of PRIFA. That is, from  
25 our point of view, and particularly in the landscape of the



1 way in which they're opposing our Lift Stay Motion,  
2 potentially highly significant information.

3 The disbursement detail documents have not included  
4 that kind of information. Now, I want to be very clear,  
5 because Ms. McKeen mentioned going through years of every  
6 single transfer, that's not our desire here. But there is a  
7 lot in their papers about transfers of this money, the first  
8 117 million to the TSA, and they claim it's commingled. But  
9 their lockbox agreement says it's sent to the credit of PRIFA.

10 We need to understand. We need more behind some of  
11 those transfers. If that means pulling out 10 exemplar  
12 transfers from a period when this happened in the ordinary  
13 course, we're happy to work on that basis. And then we can  
14 ask follow-up questions on those, like you said, in an  
15 appropriate meet and confer type way.

16 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
17 think that's entirely appropriate, and I think that's an  
18 entirely appropriate follow-up, to have that kind of  
19 conversation.

20 MR. MAINLAND: Okay. Thank you, Your Honor.

21 Just let me make sure. That's all I have. Thank  
22 you.

23 MR. NATBONY: Just a couple of quick last points and  
24 a couple of suggestions, Your Honor. We have had the  
25 opportunity to go through, as much as we can, productions that

1 have already been made. One was made just a couple days ago,  
2 and I think we're basically through that one as well.

3 So we have noticed there are a number of categories  
4 of documents where they produced certain documents already for  
5 certain time periods but not others. So just to let the Court  
6 know, we will let them know what time periods we seem to be  
7 missing in an effort to try and help them find those.

8 Maybe they're coming. Maybe they're not. Maybe they  
9 haven't found them yet. But the suggestion is we will provide  
10 to them at least what we think is missing so that we can  
11 coordinate on that.

12 Similarly, I think it might make sense if we meet and  
13 confer, at least talk about what the accounts are that they  
14 are looking at so that, in light of the timing that we have  
15 here -- I mean, I think Ms. McKeen said she thought it was  
16 maybe 20 accounts or something like that. And I think that's  
17 probably right, but I think we want to make sure that we're  
18 looking at the same group.

19 We have certain documents that have been produced  
20 that mention various accounts. And I'm happy to sit down with  
21 them and talk about what accounts they are just to make sure  
22 they aren't ones that are missing from the list, so we don't  
23 have to do this again as it gets close to the 16th.

24 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: As I  
25 understood it, there was a spreadsheet --

1 MR. NATBONY: There are, but there are other  
2 documents, too. There is a spreadsheet, but there are other  
3 documents. And some of them -- I mean, we don't know when  
4 some of the -- so, for instance, even if you look at the cash  
5 restriction analysis, there's something called the trust  
6 custody account. I just want to make sure that that's on that  
7 list on the spreadsheet we're talking about.

8 So as long as we're talking about the same accounts,  
9 you know, I have no problem. I would suggest that we do that.

10 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: So  
11 Ms. McKeen, is that something that you think makes sense to  
12 have a meet and confer about?

13 MS. MCKEEN: Absolutely, Your Honor. We're happy to  
14 meet.

15 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.

16 MR. NATBONY: And I guess the other point was just on  
17 the third party and the banks. I appreciate that they have  
18 taken upon the effort to reach out to the banks. I would hope  
19 that if there is an issue that arises, that we know as soon as  
20 possible, because I'd rather not know --

21 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I'm  
22 sorry. We're going to wrap this up or they're going to shut  
23 off the lights.

24 MR. NATBONY: Okay. So just on the banks, I'd like  
25 to know if there's an issue sooner rather than later, because

1 I would not like to know on the 16th that they were unable to  
2 do something and we're stretched for time.

3 So if there is an issue, I would just appreciate if  
4 they let us know so we can issue relevant third-party  
5 discovery if we need to.

6 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Why  
7 don't you make up a date that you're going to meet and confer  
8 on, or just have weekly telephone calls. You only have a  
9 couple weeks.

10 MS. MCKEEN: That's fine, Your Honor. I think that  
11 makes sense. Obviously we've already flagged the issue with  
12 respect to GDB, so --

13 MR. NATBONY: Thanks.

14 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All  
15 right. So are we done in New York?

16 (No response.)

17 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All  
18 right. I did it. I think that's it, right? Everybody good?

19 MR. MERVIS: Just for clarity, and I don't want to  
20 argue in the dark, but Your Honor, so on the depositions, the  
21 instruction is meet and confer?

22 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN:  
23 Correct, but they are allowed a 30(b)(6.) They are allowed a  
24 30(b)(6) deposition.

25 MR. MERVIS: A 30(b)(6)?

1 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Well,  
2 I think one for each. One for each.

3 MR. NATBONY: (Nodding head up and down.)

4 MR. MERVIS: All right. So let me again -- just to  
5 be clear, there are four notices. One of them is to the  
6 Oversight Board -- oh, five notices.

7 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: No --  
8 well, I would imagine that there would be one for each of the  
9 -- for HTA, for PRIFA and for CCDA. Is that --

10 MR. MERVIS: That would seem the most that could  
11 conceivably have any purpose, Your Honor.

12 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
13 mean, because those are the structures that you need.

14 MR. MERVIS: They are. But just to be -- so if we  
15 agree with the -- I'm looking at the lights, but --

16 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I'm  
17 going to make you come back in the morning if you don't really  
18 finish this.

19 MR. MERVIS: Yes. Those three, Your Honor, again,  
20 subject to meeting and conferring on the topics --

21 MS. MCKEEN: I don't know if -- I think a meet and  
22 confer is appropriate, Your Honor. Part of the issue here is  
23 that we didn't even get these deposition notices until after  
24 the Proposed Order was filed on Monday. That's how recent  
25 this all is.

1           It's five notices. It's over 25 topics. There's a  
2 real question in our mind as to whether these entities, some  
3 of whom aren't in Title III, are the appropriate subjects of  
4 deposition notices, as opposed to the Commonwealth itself.

5           So I think there's more meet and confer work to  
6 actually be done here.

7           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Okay.

8           MR. NATBONY: Your Honor, if I may, I don't want to  
9 lose the lights, but they've known about our request for  
10 30(b)(6) for quite a time.

11           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: This  
12 is the Order. You need to file a status report with me by  
13 the 11th on your meet and confers on the 30(b)(6.) If you  
14 haven't reached an agreement by then, you need to spell out  
15 what your positions are, and I'll make a ruling on the papers  
16 as to what the scope of the appropriate 30(b)(6) depositions  
17 are.

18           MR. NATBONY: Topics are fine, but also I think the  
19 Commonwealth is making arguments about appropriations, so we  
20 think there needs to be one on the Commonwealth.

21           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I  
22 want you to talk about it. But that's March 11th, okay?

23           MS. MCKEEN: Yes, Your Honor.

24           MR. NATBONY: Thank you, Your Honor.

25           MR. MERVIS: Thank you, Your Honor.

1 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: Thank

2 you all.

3 (At 6:42 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT )  
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 272 pages is  
5 a true and accurate transcription to the best of my ability of  
6 the proceedings in this case before the Honorable United  
7 States District Court Judge Laura Taylor Swain, and the  
8 Honorable United States Magistrate Judge Judith Gail Dein on  
9 March 4, 2020.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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